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HENRY MCMASTER
ATTORNEY GENERAL

February 1, 2006

The Honorable James H. Harrison
Member, House of Representatives
512 Blatt Building
Columbia, South Carolina 29211

Dear Representative Harrison:

We received your letter requesting an opinion from this Office as to our interpretation of section 61-4-1115 of the South Carolina Code, which you state:

> I sponsored . . . to protect South Carolina beer wholesalers' distribution rights in foreign brewer's brands from being terminated without the consent of the wholesaler. There have been a number of changes in the global beer industry and I am asking your opinion on [section 61-4-1115 of the South Carolina Code] to protect this important segment of the three-tier beer industry.

You add, "Recently, there have been several foreign brewers who have been purchased by other brewers, with old brands being brewed by the new purchaser. I want to confirm that this section protects these brands for South Carolina wholesalers regardless of who brews the brand and/or who imports the brand."

After receipt of your letter, the General Assembly amended section 61-4-1115 of the South Carolina Code, effective June 7, 2005. In this opinion, we will address your concerns and interpret the statute in accordance with the revised section 61-4-1115.

Law/Analysis

Regulation of Beer

Before addressing section 61-4-1115 of the South Carolina Code (Supp. 2005), by way of background we provide some general information on regulation of the beer industry. The Twenty-First Amendment to the United States Constitution essentially gives states complete control over the importation, sale, and distribution of liquor. North Dakota v. U.S., 495 U.S. 423, 431 (1990). With

regard to state regulation of liquor, courts generally uphold state laws regulating liquor as long as the law serves the state's interest by regulating the transportation, importation, delivery, or use of liquor. California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc., 445 U.S. 97, 107 (1980).

South Carolina law regulating beer and wine is located in Chapter 4 of Title 61 of the South Carolina Code (the "Beer Law"). The Beer Law implemented a so-called "three tier" scheme, regulating beer at the producer, wholesaler, and retailer levels. Op. S.C. Atty. Gen., December 9, 1999. Section 61-4-300 of the South Carolina Code (Supp. 2005), defines producer to include "a brewery or winery or a manufacturer, bottler, or importer of beer or wine to the United States." Section 61-4-310(A) of the South Carolina Code (Supp. 2005), requires producers to apply to the South Carolina Department of Revenue for "a certificate of registration, which must be approved and issued before the shipment of beer or wine by the producer to a point within the State." Wholesalers may only purchase beer from manufacturers or importers who hold a certificate of registration and manufacturers may only sell beer to a person holding a wholesale permit. S.C. Code Ann. §§ 61-4-310(C) & 61-4-940(A) (Supp. 2005).

The Beer Law contains provisions specifically governing the relationship between beer wholesalers and producers. S.C. Code Ann. §§ 61-4-900–1320 (Supp. 2005). Section 61-4-1100 of the South Carolina Code (Supp. 2005), provides a list of prohibited practices with regard to producers and wholesalers. Among the prohibited acts by producers, it is unlawful for a producer

> to unfairly, without due regard to the equities of the beer wholesaler or without just cause or provocation, cancel or terminate a written or oral agreement or contract, franchise, or contractual franchise relationship of the wholesaler existing on May 1, 1974, or thereafter entered into, to sell beer manufactured by the registered producer; this provision is a part of a contractual franchise relationship, written or oral, between a beer wholesaler and a registered producer doing business with the beer wholesaler, just as though the provision had been specifically agreed upon between the beer wholesaler and the registered producer.

S.C. Code Ann. § 61-4-1100(1)(b). Furthermore, section 61-4-1120 of the South Carolina Code (Supp. 2005) provides a remedy for violations of section 61-4-1100 by giving the courts jurisdiction "to enjoin the cancellation or termination of a franchise or agreement . . . ."

In an opinion dated December 9, 1998, this Office determined the Beer Law controls if a conflict arises between its provisions and an agreement between a producer of beer and a wholesaler. In addition, addressing section 61-4-1100(1)(b) specifically, this Office found this provision must be read into any agreement between the producer and the wholesaler, regardless of whether it

conflicts with the agreement. Id. In making these determinations, this Office in part relied on the Indiana Supreme Court case of Miller Brewing Co. v. Best Beers of Bloomington, Inc., 608 N.E.2d 975 (Ind. 1993). That case involved an action by a beer distributer against a brewer alleging the brewer unlawfully terminated a distributor agreement. Id. The Indiana Supreme Court held, among other things, "A brewer may not circumvent the Termination Statute by contract." Id. at 979.

Section 61-4-1115 of the South Carolina Code

In our attempt to interpret section 61-4-1115 of the South Carolina Code, we remain cognizant of the rules of statutory interpretation. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Kiriakides v. United Artists Commc'n, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994). "In ascertaining the intent of the Legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole." Croft v. Old Republic Ins. Co., 365 S.C. 402, 412, 618 S.E.2d 909, 914 (2005). Initially, the intent of the legislature may be gleaned from the plain meaning of the statute. Litchfield Plantation Co., Inc. v. Georgetown County Water and Sewer Dist., 314 S.C. 30, 34, 443 S.E.2d 574, 576 (1994). "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Miller v. Aiken, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005) (citation omitted). However, if the true intention of the Legislature, "though obvious, is not expressed by the language employed in a statute when that language is given its literal meaning, . . . the real purpose and intent of the lawmakers will prevail over the literal import of the words." Greenville Baseball v. Bearden, 200 S.C. 363, 368, 20 S.E.2d 813, 815 (1942). Specifically, with regard to section 61-4-1115, we note, the Beer Law is remedial in nature and therefore, must be liberally construed to effectuate its purpose. See Ducworth v. Neely, 319 S.C. 158, 163 n.3, 459 S.E.2d 896, 899 n.3 (Ct. App. 1995) ("Remedial statutes are to be construed liberally in order to effectuate their purpose.").

The statute in question, section 61-4-1115 of the South Carolina Code, states:

> For the purpose of this article, when a registered producer is an importer of beer produced by a brewer located outside of the United States, the importer is considered to be the agent of the foreign brewer and an agreement subject to the provisions of this article between a wholesaler and the importer is binding on a successor importer of beer produced by that foreign brewer, its successor, or its assignee.

Initially, we examine the plain language of this statute. On its face, section 61-4-1115 binds subsequent importers to the terms of the agreement entered into by the original importer and the wholesaler. However, based upon our understanding of the statute's legislative intent, we find the statute goes further to bind any importer to the terms of that agreement when that importer imports a brand of foreign beer to South Carolina previously subject to an agreement between a South Carolina wholesaler and an importer.

On December 9, 1998, and prior to the enactment of section 61-4-1115, this Office issued an opinion in which we set forth our interpretation of the legislative intent of the Beer Law as a whole. We determined, "the General Assembly clearly intended that the beer wholesaler must be protected in his franchise with the brewer by the various provisions of state law . . . ." Id. Section 61-4-1115 deals with importers rather than the brewer directly. However, when an importer is involved, it, rather than the brewer, is the producer under the Beer Law. Therefore, in this situation, we find the General Assembly likely intended for a beer wholesaler also to be protected in his franchise with an importer.

Additionally, the legislative intent of section 61-4-1115 in particular can be gleaned from a reading this statute in light of other provisions in the Beer Law. Section 61-4-1100 of the South Carolina Code, as we previously pointed out, provides a list of prohibited practices by producers when dealing with wholesalers. Although section 61-4-300 includes importers in its definition of producers, that statute does not specifically include successor importers. Thus, an inference can be drawn from the enactment of section 61-4-1115, that the General Assembly sought to ensure a wholesaler receives the same level of protection it received under its agreement with the original importer in the event the importer changes. Moreover, given the legislative intent of the Beer Law as a whole, the wholesaler's rights with respect to the brand of beer brewed by the foreign brewer, which is the subject of the wholesaler's agreement with the original importer, would not be affected regardless of what importer imports that brand of beer.

Finally, the General Assembly's 2005 amendment to section 61-4-1115 further reveals its intent with regard to this statute. The title to Act 173 amending this statute describes the amendment's purposes as "to clarify that a foreign brewer includes its successor or assignee." Act. No. 173, 2005 S.C. Acts __. Thus, effective June 7, 2005, the General Assembly added the language ", its successor, or its assignee" to the end of statute. S.C. Code Ann. § 61-4-1115. This addition, appearing just after the words "foreign brewer," evidences the Legislature's intent to clarify that regardless of a change in the form or ownership of the foreign brewer involved, the importer of the brand of beer brewed by the original brewer is bound by the agreement between the wholesaler and the original importer.

Therefore, we conclude the General Assembly intended section 61-4-1115 to protect the wholesaler by binding any importer of beer produced by a foreign brewer to the agreement in which

the original importer agreed to import the same brand of beer for sale to a wholesaler. Additionally, any importer of that brand of beer remains bound to the agreement regardless of who brews the beer. Thus, as you state section 61-4-115 protects "South Carolina wholesalers regardless of who brews the brand and/or imports the brand."

Very truly yours,

Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
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