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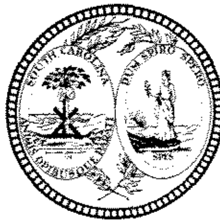

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 10, 1995

The Honorable Ronald C. Fulmer
Member, House of Representatives
320C Blatt Building
Columbia, South Carolina 29211

Dear Representative Fulmer:

By your letter of March 30, 1995, you inquire whether a licensed beer wholesaler may furnish equipment to the holder of a retail beer permit. You reference South Carolina's so-called "three tier" beer law, see, S.C. Code Ann. Section 61-9-315, which prohibits the giving, renting, lending or selling of any equipment between the three tiers of the beer industry (brewer, wholesaler, retailer). Specifically, you note that:

> [t]here has been an outbreak in what I consider to be violations of this law. Some wholesalers are giving cooling and refrigerated equipment for the purpose of placing juices and or waters in them. The law did not provide any exceptions. My feeling is that if they are licensed beer wholesalers, any equipment is prohibited regardless of what it is used for.

Section 61-9-315 specifies in pertinent part:

> ... (B) A manufacturer, brewer, importer, or wholesaler of beer, or anyone acting on their behalf, shall not furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retail permit any equipment, fixtures, free beer or service.
>
> (C) Notwithstanding subsection (B), a wholesaler may furnish at no charge to the holder of a retail permit draft beer equipment replacement parts of nominal value, including

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Request Letter

> washers, gaskets, hoses, hose connectors, clamps, and tap markers, party wagons for temporary use, and point of sale advertising specialties. A wholesaler may also furnish the following services to a retailer: cleaning draught lines, setting boxes, rotating stock, affixing price tags to beer products and building beer displays.
>
> (D) The holder of a retail permit, or anyone acting on his behalf, shall not accept, directly or indirectly, any equipment, fixtures, free beer, or service referred to in subsection (B) from a manufacturer, brewer, importer or wholesaler of beer except as provided in subsection (C).

In interpreting any statute, the primary purpose is to ascertain the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Where a statute is clear and unambiguous, its terms must be given their literal meaning. Crown Cork and Seal Co., Inc. v. S.C. Tax Comm., 302 S.C. 140, 394 S.E.2d 315 (1990). It is the duty of a court to give an unambiguous statute effect according to the clear meaning of its language. Helfrich v. Brasington Sand and Gravel Co., 268 S.C. 236, 233 S.E.2d 291 (1977). A statute which is remedial in purpose must be broadly construed to fully effectuate its purpose. South Carolina Dept. of Mental Health v. Hanna, 270 S.C. 210, 241 S.E.2d 563 (1978).

Pursuant to the South Carolina Constitution, Art. VIII-A, Sec. 1, the General Assembly possesses plenary power to regulate alcoholic beverages in this State. By enacting the "three tier" law, the Legislature has expressed its desire that the sale and transfer of beer within South Carolina is comprehensively regulated.

Moreover, the General Assembly has made it abundantly clear in Section 61-9-315(B) that a beer wholesaler "or anyone acting on their behalf" shall not "furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retail permit any equipment, fixtures, free beer or service." (emphasis added). Such may not be done either "directly or indirectly." Through its use of the word "shall", the Legislature made this proscription mandatory, in keeping with the fundamental purpose of the comprehensive "three tier" legislation. S.C. Police Officers Retirement System v. City of Spartanburg, 301 S.C. 188, 391 S.E.2d 239 (1990). By its use of the word "any", the Legislature meant to make this proscription all-encompassing. Furthermore, so as to leave no doubt, the Legislature reiterated the identical prohibition in Subpart (D) as applied to the retailer; just as the manufacturer, brewer importer or wholesaler is forbidden from providing equipment, etc. to the retailer, the latter may not accept such.

In addition, the Legislature carefully enumerated certain exceptions in subpart (C), including washers, gaskets hoses, hose connectors, champs and tap markers, among others. Nowhere, however, is cooling and refrigerated equipment mentioned in the list of exceptions. As we have stated previously, in construing another statute regarding beer and wine,

> ... where the General Assembly has expressly authorized a particular course of conduct or activity, this express authorization is intended to exclude activities or conduct that is not expressly mentioned. This rule is commonly referred to as "expressio unius est exclusio alterius." Little v. Town of Conway, 171 S.C. 27, 171 S.E. 447 (1933). This rule of statutory construction is applied to statutory provisions, such as Section 61-9-180, that prescribe or authorize a particular form of conduct and the persons and things to which it infers. Sutherland, Statutory Construction, Sec. 47.23. Further, this rule
>
> > ... is a product of 'logic and common sense.' It expresses the learning of common experience that when people say one thing they do not mean something else.
>
> Id. Sec. 47.24.

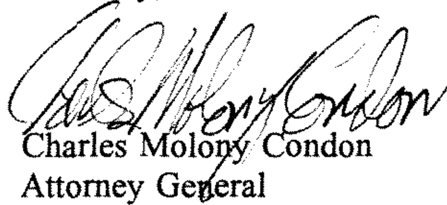
Op. Atty. Gen. , July 3, 1991. Likewise, our Court of Appeals has also emphasized the significance of the Legislature's specification of exceptions in a statute:

> Under the rule, exceptions made in a statute give rise to a strong inference that no other exceptions were intended. Pa. Nat. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984).

Finally, the argument has been made that the purpose here is not to violate the proscription of the "three tier" law, but simply to provide "water cooler" products or services to a retailer. However, I agree with you that this argument is not persuasive. Section 61-9-315 does not specify nor suggest that the provision of equipment to a retailer by a brewer, manufacturer or wholesaler is, in certain instances, permissible, depending upon the purpose for which it is done. Instead, the statute proscribes "any" equipment from being given or provided, with certain limited exceptions, not relevant here. Where the statute is clear and unambiguous, as this one is, there can be no room for doubt.

In summary, I agree with you that a beer wholesaler's giving or providing of cooling and refrigerated equipment to a retailer for the purpose of placing juices and or waters in them is clearly proscribed by Section 61-9-315.

Sincerely,



Charles Molony Condon
Attorney General

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