

1984 WL 249857 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 12, 1984

*1 Nicholas P. Sipe
Executive Director
South Carolina Alcoholic Beverage Control Commission
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Nick:

You have inquired whether a registered producer of alcoholic liquor may maintain a purchase money security interest in alcoholic liquors sold to a licensed wholesaler.¹ We advise that there is no prohibition upon a registered producer's holding of such a security interest, however, there are certain restrictions upon the transfer of alcoholic liquors that make this conclusion somewhat guarded.

There is no specific prohibition upon the maintenance of a purchase money security interest by a registered producer in the alcoholic liquor inventory of a licensed wholesaler. While case law in this area is scant, [In Re: Rudy's, Inc.; Andrews v. Rochester](#), 23 B.R. 1 (E.D. Mich. 1981), suggests that in the absence of a prohibiting statute or regulation a security interest in alcoholic liquors may be maintained. Although, in [Rudy's Inc.](#), the bankruptcy court disallowed the priority of a security interest in alcoholic liquors, the court noted a specific prohibition in Michigan law against the maintenance of a security interest in alcoholic liquors. The Court emphasized that in the absence of the specific prohibition in Michigan law, a security interest in alcoholic liquors could be maintained.

Other related statutes and regulations within the Alcoholic Beverage Control Act do not appear to prohibit the holding of a purchase money security interest in alcoholic liquors by a registered producer. In contrast to the provision prohibiting credit sales of alcoholic liquors by wholesalers or retailers,² there is nothing within the Alcoholic Beverage Control Act which prohibits a credit sale of liquor by a registered producer to a wholesaler. Likewise, there is no statute prohibiting a registered producer of alcoholic liquors from having an interest in a wholesaler.³

In addition, we are advised by the South Carolina Alcoholic Beverage Control Commission that maintenance of a security interest in the alcoholic liquor inventory of a wholesaler by a registered producer does not conflict or in any way frustrate enforcement policies concerning the regulation of alcoholic liquors by the Commission. Further, we are advised that the holding of such a security interest would not frustrate enforcement of South Carolina's tax laws relating to alcoholic liquors. These state taxes are generally levied at the time the wholesaler sells the liquor to a retailer. [See, i.e.](#), Title 12, Chapter 33, CODE OF LAWS OF SOUTH CAROLINA, 1976 (1983 Cum.Supp.).

Even though we do not address by way of this opinion what, if any, remedies may be available to enforce a security interest in alcoholic liquors by the creditor, we caution that pursuant to South Carolina's liquor regulatory scheme, liquor may only be possessed, transferred or sold in accordance with State law. Section 61-13-210. At least one case has construed this 'prohibited except where permitted' regulatory scheme in South Carolina as preventing execution and levy upon alcoholic liquors. [Lanahan & Sons v. Bailey](#), 53 S.C. 489 (1898), Justice Jones concurring. Also, we caution that § 61-3-410(2) may limit a wholesaler from transferring liquor to anyone other than licensed manufacturers or retailers. Moreover, as earlier noted, the alcoholic liquor subject of the security interest would most probably remain untaxed while remaining in the inventory of the wholesaler, thus restricting further the transferability of the liquor. [See, i.e.](#), § 61-13-220. In furtherance of this thought, it is doubtful that

the provisions of Article 9 of the UCC as adopted in South Carolina would override these and similar provisions restricting transferability of liquor. Section 36-9-201 and Editor's Comments cited therein; [Mokarzel v. Vorias](#), (Me.) 419 A.2d 1017 (1980); [Fields v. Hunter](#), (D.C. Appeal), 368 A.2d 1156 (1977).

*2 Thus, in conclusion, we have located no provision prohibiting the holding by a registered producer of a purchase money security interest in alcoholic liquors sold to a wholesaler. We do caution, however, that the enforceability of these security agreements might be restricted by the Alcoholic Beverage Control Act.

Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

Footnotes

- 1 Pursuant to [§ 61-7-10, CODE OF LAWS OF SOUTH CAROLINA](#), 1976 a producer is defined as:
a manufacturer, distiller, rectifier, blender, or bottler of alcoholic liquors and shall include an importer of alcoholic liquors engaged in importing such alcoholic liquors into the United States.
A wholesaler is defined in [§ 61-3-410\(2\)](#) as one authorized to:
purchase, store, keep, possess, import into this State, transport, sell and deliver alcoholic liquors in bottles or light closed containers, in accordance with regulations of the Commission, to any person having a manufacturer's or retailer's license . . .
- 2 See, [§ 61-3-920, CODE OF LAWS OF SOUTH CAROLINA](#), 1976.
- 3 [Compare](#), [§ 61-9-315\(b\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976 (1983 Cum.Supp.), which pertains to beer and wine manufacturers or brewers.

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