

1978 WL 35073 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 23, 1978

**\*1 RE: Applicability of § 61-7-120 to employees of wholesale or retail liquor businesses**

Mr. Clifford R. Raysor  
Hearing Officer  
S.C. Alcoholic Beverage Control  
Commission  
1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Mr. Raysor:

Senator John Lindsay has asked for advice as to the applicability of § 61-7-120 of the 1976 Code to employees of wholesale or retail liquor businesses. Section 61-7-120 provides as follows:

No person having a direct or indirect interest in a wholesale or retail liquor business in South Carolina may qualify as a producer representative.

Essentially Senator Lindsay is asking whether an employee of a wholesale or retail liquor business has a direct or indirect interest in that business.

The word “interest” is defined in Black's Law Dictionary (Rev. 4th ed., 1968) as “a right to have the advantage accruing from anything.” (p. 950). Black's further defines “direct interest” as “an interest which is certain, and not contingent or doubtful.” (p. 546).

While Black's does not define “indirect interest”, it says that the word “indirect” is “(a)lmost always used in law in opposition to ‘direct’ ”. (p. 913). Therefore, if a direct interest is certain and absolute, an indirect interest is uncertain and contingent.

Clearly, an advantage accruing from the operation of a business is income. There is no doubt that the owner of a business has a certain and absolute right to income from his business. He thus has a direct interest in the business. Likewise, an employee has a right to some income as the result of the operation of his employer's business. Unlike the owner, however, the employee's right to income from the business is contingent upon his employment. Termination of the employee's employment results in termination of the employee's right to any portion of the income of the business. The employee's interest is thus indirect. Section 61-7-120 applies to persons having direct or indirect interests, however, and I therefore feel that the statute applies to employees as well as owners.

My conclusion is reinforced by a consideration of the statutes governing importation of alcoholic beverages into the State. Chapter 7, Title 61 of the 1976 Code sets forth a regulatory scheme which was approved by the U.S. Supreme Court in [Heublein v. South Carolina Tax Commission](#), 409 U.S. 275 (1972). This scheme requires registered producers to ship registered alcoholic beverages to registered producer-representatives in South Carolina. The registered producer-representative may then ship the beverages to a licensed wholesaler. The obvious purpose of this chain of importation and distribution was to eliminate direct shipments from foreign producers to domestic wholesale and retail liquor businesses.

The object which the legislature intended to accomplish in § 61-7-120 was to prevent circumvention of the foregoing chain of importation and distribution. “In construing a statute to give effect to the intent or purpose of the legislature, the court must look to the object to be accomplished, and the evil or mischief sought to be remedied.” 82 C.J.S. Statutes § 323, pp. 593-597; see also, [Squires v. South Carolina Law Enforcement Division](#), 249 S.C. 609, 155 S.E.2d 859 (1967). The legislature recognized that direct shipment of alcoholic beverages to persons interested in wholesale or retail liquor businesses could be tantamount to direct shipment to the businesses themselves. In other words, the position of producer-representative could be effectively eliminated and the prohibition against direct interstate sales violated. Since an employee is responsible to his employer, it is difficult for him to act as the independent intermediary, i.e., producer-representative, which the statutes envision.

\*2 For the foregoing reasons, it is my feeling that § 61-7-120 applies to employees of wholesale and retail liquor businesses.

Very truly yours,

L. Kennedy Boggs  
Staff Attorney

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