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SPRINGFIELD

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FILE NO. S-1462

**LIQUORS:**

Licensing of Beer Manufacturers and  
Effect of Merger on "Grandfather Clause"

Jack G. Wallenda, Executive Director  
Illinois Liquor Control Commission  
160 North LaSalle Street  
Chicago, Illinois 60602

Dear Mr. Wallenda:

I have your letter in which you request interpretations of section 1 of article II, section 1 of article V, and section 3 of article VI of the Liquor Control Act. (Ill. Rev. Stat. 1977, ch. 43, pars. 96, 115, 121.) More specifically, you ask:

(1a) "May a manufacturer of beer not licensed in Illinois bring beer into Illinois and warehouse it here in compliance with the requirements of the Department of Revenue for subsequent sale to Illinois licensed distributors? If [it] must be licensed in Illinois, what type a license is required?"

It is my opinion that a beer manufacturer must have a Class 3, Brewer's license, in order to sell beer to licensed distributors in Illinois.

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- (1b) "May a manufacturer of beer, whether licensed in Illinois or in some other State, receive a distributor's, importing distributor's or foreign importer's license in Illinois?"

It is my opinion that one may.

- (2) "May a distiller who holds a grandfather clause privilege for a given distributorship, acquire after 1947, through merger or otherwise, a distributor's license for a distributorship already existing but possessing no grandfather's privilege itself? Or is the privilege of dual licensing limited to those legal entities who were actually in possession of the dual licenses prior to 1947?  
\* \* \*"

It is my opinion that it may not.

- (3) "May a licensed distiller, either in State or out of State which owns all of the stock of two corporations, also licensed distillers, (whether in State or out of State), one of which holds no license in Illinois of any kind and has not previously been licensed in Illinois, nor registered to do business as a foreign corporation, merge the grandfathered corporation into the non-licensed corporation (survivor) and apply for and receive a distributor's license in the name of that corporation?"

It is my opinion that it may not.

With respect to part (a) of your first question, section 1 of article II of the Act (Ill. Rev. Stat. 1977, ch. 43, par. 96) prohibits all persons from manufacturing, selling or transporting alcoholic liquor except as specifically authorized by the Act. The section states in part:

"No person shall manufacture, bottle, blend, sell, barter, transport, deliver, furnish or possess any alcoholic liquor for beverage purposes, except as specifically provided in this Act, provided, however, nothing herein contained shall

prevent the possession and transportation of alcoholic liquor for the personal use of the possessor, his family and guests, \* \* \* and provided further that nothing herein contained shall prevent any duly licensed practicing physician or dentist from possessing or using alcoholic liquor in the strict practice of his profession, \* \* \* and provided further that any drug store employing a licensed pharmacist may possess and use alcoholic liquors in the concoction of prescriptions of duly licensed physicians; and provided further, that the possession and dispensation of wine by an authorized representative of any church for the purpose of conducting any bona fide rite or religious ceremony conducted by such church shall not be prohibited by this Act." (Emphasis added.)

Section 1 of article V (Ill. Rev. Stat. 1977, ch. 43, par. 115) authorizes the licensing of the several kinds of liquor businesses. Each is distinguished from the others and can be conducted only under the appropriate license:

"Licenses issued by the Illinois Liquor Control Commission shall be of the following classes: (a) Manufacturer's license--Class 1. Distiller, Class 2. Rectifier, Class 3. Brewer, Class 4. Wine manufacturer, Class 5. Winemaker; (b) Distributor's license, (c) Importing Distributor's license, (d) Retailer's license, \* \* \*

(a) A manufacturer's license shall allow the manufacture, importation in bulk, storage, distribution and sale of alcoholic liquor to persons without the State, as may be permitted by law and to licensees in this State as follows:

Class 1. A Distiller may make sales and deliveries of alcoholic liquor to distillers, rectifiers, importing distributors, distributors and non-beverage users and to no other licensees.

\* \* \*

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Class 3. A Brewer may make sales and deliveries of beer to importing distributors, distributors, retailers and to non-licensees, in accordance with the provisions of this Act.

Class 4. A Wine-manufacturer may make sales and deliveries of wine to manufacturers, importing distributors and distributors, and to no other licensees.

\* \* \*

(Emphasis added.)

Since there is no authority in the Act for a person to conduct the "importation \* \* \*, distribution and sale of alcoholic liquor" except under a manufacturer's license, it is my opinion that a manufacturer outside the State must have a Class 3, Brewer's license, in order to bring beer into the State and sell it. Compliance with the requirements for warehousing alcoholic liquors (Ill. Rev. Stat. 1977, ch. 43, pars. 157a - 157f) as administered by the Department of Revenue does not authorize importation of beer into Illinois. A license from the Liquor Control Commission is required.

In the second part of your first question, you ask whether a manufacturer of beer may receive a distributor's, importing distributor's, or foreign importer's license. Section 3(a) of article VI (Ill. Rev. Stat. 1977, ch. 43, par. 121) forbids a:

"\* \* \* person licensed by any licensing authority as a distiller, or a wine manufacturer, \* \* \* [from being] issued an importing distributor's or distributor's license \* \* \*."

\* \* \*

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It clearly disallows such licensing as to distillers or wine manufacturers, but the section does not extend the prohibition to brewers. Brewers are not included in the term "distillers", for "distillers" as defined in section 2.07 of article I (Ill. Rev. Stat. 1977, ch. 43, par. 95.07):

" \* \* \* means a person who distills, ferments, brews, makes, mixes, concocts, processes, blends, bottles or fills an original package with any alcoholic liquor.

The above definition for a distiller includes a manufacturer of wine, but does not include a manufacturer of beer or bottler of wine. \* \* \*"

Consequently, it is my opinion that brewers are not included within the prohibition of section 3 of article VI. There are no other provisions which prevent a manufacturer of beer from receiving a distributor's, importing distributor's or foreign importer's license.

Your second question pertains to the ability of a corporation with a distiller's license that has existed since before 1947 to obtain a distributor's license at the present time. It is quite clear that it cannot. Subsection (c) of section 3 of article VI (Ill. Rev. Stat. 1977, ch. 43, par. 121) states in pertinent part:

" \* \* \*

(c) Provided, however, that in such instances where a distributor's or importing distributor's license has been issued to any distiller or wine manufacturer or to any subsidiary or affiliate of any distiller or wine manufacturer who has, during the licensing period ending June 30, 1947,

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sold or distributed as such licensed distributor or importing distributor alcoholic liquors and wines to retailers, such distiller or wine manufacturer or any subsidiary or affiliate of any distiller or wine manufacturer holding such distributor's or importing distributor's license may continue to sell or distribute to retailers such alcoholic liquors and wines  
\* \* \*

\* \* \*

"

(Emphasis added.)

The Act plainly allows only those distillers that were engaged as distributors at the time of the Act's passage to continue to hold dual licenses.

In your third question you ask about the effect of a merger on a corporation possessing an exemption under section 3 of article VI of the Act. (Ill. Rev. Stat. 1977, ch. 43, par. 121.) It is my opinion that such a corporation loses its dual licensing privilege when it is merged into another corporation and that the surviving corporation does not receive the exemption. Section 1 of article VI (Ill. Rev. Stat. 1977, ch. 43, par. 119) provides that licenses are not transferable:

"A license shall be purely a personal privilege, good for not to exceed one year after issuance, except a non-beverage user's license, unless sooner revoked as in this Act provided, and shall not constitute property, nor shall it be subject to attachment, garnishment or execution, nor shall it be alienable or transferable, voluntarily or involuntarily, or subject to being encumbered or hypothecated. \* \* \*

\* \* \*

"

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Thus if the surviving corporation in a merger is not the one that held the license, the newly merged corporation cannot possess the extinguished corporation's license. Further, although as a general rule a corporation formed by the merger of two other corporations may continue to do any business that the constituent corporations operated, the rule is modified in cases involving businesses in which there is a strong public interest. In such situations, the provisions pertaining to the transference of licenses found in statutes governing such businesses supersede the general provisions of the Business Corporation Act. This is true, the cases emphasize, despite the language found in the model Business Corporation Act and the State laws similar thereto that grants merged companies all "privileges, immunities, and franchises" of their constituent companies. State v. Timm (Wash., 1970), 477 P. 2d 15, Bracy Development Co. v. Milam (Ark., 1972), 478 S.W. 2d 765.

It is therefore my opinion that a distiller holding a distributor's license under subsections 3(b) and (c), article VI, loses the right to do so if it merges.

Very truly yours,

A T T O R N E Y G E N E R A L