

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
**PO BOX 20207**  
**NASHVILLE, TENNESSEE 37202**

May 26, 2011

Opinion No. 11-48

Wholesaler liquor licenses

---

**QUESTION**

May the Alcoholic Beverage Commission issue a wholesaler's license to a corporation whose stock is wholly owned by another corporation, limited liability company, or trust that meets the statutory requirements of Tenn. Code Ann. § 57-3-203(f), or must the applicant corporation's stock be owned solely by individuals?

**OPINION**

Pursuant to Tenn. Code Ann. § 57-3-203(f), the Alcoholic Beverage Commission may issue a wholesaler's license only to a corporation whose stock is owned by individuals who meet certain statutory requirements, and not to a corporation owned by another form of business such as another corporation, limited liability company, or trust.

**ANALYSIS**

Tenn. Code Ann. § 57-3-203(f) sets forth the qualifications for obtaining a wholesale liquor license. If the applicant is a corporation, such qualifications include:

All of its capital stock must be owned by *individuals* who have been residents of Tennessee for not less than five (5) years next preceding or who at any time have been residents of the state of Tennessee for at least fifteen (15) consecutive years, and who have not been convicted within a period of five (5) years preceding acquisition of such stock for violation of either state or United States prohibition laws or revenue laws relating to intoxicating liquors.

Tenn. Code Ann. § 57-3-203(f)(1) (emphasis added).

The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. *Westinghouse Electric Corporation v. King*, 678 S.W.2d 19, 23 (Tenn. 1984). If the statutory language is unambiguous, that intent is to be found in the plain meaning of the statutory language. *Eastman Chem. Co. v. Johnson*, 151 S.W. 3d 503, 507 (Tenn. 2004). A statute is

ambiguous if its language reasonably lends itself to more than one interpretation. *Sallee v. Barrett*, 171 S.W.3d 822, 828 (Tenn. 2005). If a statute is found to be ambiguous, courts will resort to other canons of statutory construction to ascertain the legislative intent. *Lee Medical, Inc. v. Beecher*, 312 S.W.3d 515, 527 (Tenn. 2010).

The statute is ambiguous. On one hand, subsection (f)(1) states that a corporation may obtain a wholesaler license but only if all of its stock is owned by individuals who have been residents of Tennessee for not less than five years. Defined in common parlance, “individual” means “of or pertaining to a single human being.” Webster’s New Collegiate Dictionary 565 (1995). One reading of that subsection therefore supports an interpretation that requires stockholders to be live human beings.

On the other hand, however, subsection (f)(2) uses the term “person” to describe a stockholder in a corporation that holds a wholesaler’s license. The term “person” is defined in Tenn. Code Ann. § 1-3-105(20) to include a corporation, firm, company, or association.<sup>1</sup> Reading that subsection in isolation could support a construction that would permit stock ownership by corporations, limited liability companies, and other artificial entities.

Under rules of statutory construction, if a statute is ambiguous, courts construe the statute as a whole to determine the general intent and purpose of the legislature. *In re Hogue*, 286 S.W.3d 890, 894 (Tenn. 2009). If possible, inconsistent parts should be construed in a manner that avoids the conflict and brings them into harmony with each other. *In re Estate of Soard*, 173 S.W.3d 22, 28 (Tenn. App. 2005). In construing a statute, courts avoid an interpretation that would lead to an absurd outcome. *Dellinger v. State*, 279 S.W.3d 282, 291 (Tenn. 2009).

Reading subsections (1) and (2) as a whole and in harmony indicates that the legislature intended to restrict stock ownership in corporations holding wholesaler’s licenses to human beings only. The term “individual” refers to human beings only, and construing the term “person” in the same manner does no violence to the language because human beings are included within the meaning of that term as well.

Such a construction is also consistent with the purpose of the statute. Tennessee has adopted a three-tiered system for the sale of alcoholic beverages in the State.<sup>2</sup> Such a system was adopted to maintain an orderly market, as well as to prevent its domination by organized crime. It was believed that the three-tier system makes it more difficult to penetrate the market by precluding the existence of a “tied” system between producers and retailers, a system generally believed to enable organized crime to dominate the industry. *Arnold’s Wines, Inc. v. Boyle*, 571 F.3d 185, 187-188 (2d Cir. 2009).

---

<sup>1</sup> Tenn. Code Ann. § 1-3-105 contains definitions of terms used in the Code unless the context requires otherwise.

<sup>2</sup> The three tiers are: (1) the manufacturer, (2) the wholesaler, and (3) the retailer. Under this system, the manufacturer sells to a licensed in-state wholesaler, and the wholesaler delivers the alcohol to a licensed in-state retailer. The retailer, in turn, sells the alcohol to consumers. Tenn. Code Ann. §§ 57-3-202 through -204.

This licensing scheme also discourages financial and other prohibited relationships among manufacturers, wholesalers, and retailers through promotion of transparency in the industry; it thus further discourages market entry by organized crime.<sup>3</sup> Construction of the statute to permit the issuance of wholesaler licenses to corporations whose stock is owned by other corporations and other artificial entities would defeat these purposes.<sup>4</sup> It stands to reason that requiring members of a corporation to be “a single human being” would assist in the facilitation of the transparency necessary to ensure an orderly market place. However, if “individual” were interpreted to mean “corporation,” or some other business entity, this could create a situation where there would be layers of ownership and it would thus not be readily ascertainable who the applicant/wholesaler truly was or whether there existed any financial or other relationships prohibited by Tennessee alcoholic beverage laws.

Therefore, it is the opinion of this Office that a wholesaler’s license may not be issued to a corporation whose stock is owned by another corporation, limited liability company, or trust.

ROBERT E. COOPER, JR.  
Attorney General and Reporter

JOSEPH F. WHALEN  
Associate Solicitor General

LYNDSAY FULLER SANDERS  
Assistant Attorney General

---

<sup>3</sup> One of the results of Prohibition was bootleg activity, which fueled the creation of organized crime families that governments spent years trying to dismantle. Carole L. Jurkiewicz & Murphy J. Painter, *Why We Control Alcohol the Way We Do, in SOCIAL AND ECONOMIC CONTROL OF ALCOHOL* 1, 6 (Carole L. Jurkiewicz & Murphy J. Painter eds., 2008).

<sup>4</sup> The statutes governing corporations, partnerships, and limited liability companies do not require public disclosure of the name of the partners, shareholders, or members. *See, e.g.*, Tenn. Code Ann. § 48-26-102 (shareholders are entitled to inspection of the corporate records); Tenn. Code Ann. § 48-224-104 (members are entitled to inspection of the LLC records); and Tenn. Code Ann. § 61-1-403 (partnerships shall provided partners access to the partnership records). Such organizations can thus become devices to conceal the identities of persons having ownership interests.

Requested by:

Danielle Elks  
Executive Director  
226 Capitol Blvd., Suite 300  
Nashville, TN 37243-0755