

SCDOR ABL OPINION

Furnishing of Equipment by Beer/Wine Wholesalers

February 18, 2026

Question Presented

To what extent does S.C. Code § 61-4-940 (along with § 61-4-735) prohibit a Beer and Wine Wholesaler/Distributor Permit holder from furnishing, lending, or giving items, equipment, drink products, or other articles to beer or wine retail permit holders, even if the Beer and Wine Wholesaler/Distributor Permit holder does so in a capacity not pertaining to the sale or distribution of beer or wine, specifically? Furthermore, what conveyances of items, equipment, drink products, or other articles by a Wholesaler/Distributor Permit Holder to a beer or wine retail permit holder are authorized by S.C. Code § 61-4-940?

I. A licensed beer wholesaler is prohibited by law from giving or lending items of value to a licensed beer retailer.

South Carolina, like many other states, regulates the commerce of beer, wine, and liquor through a three-tiered distribution and licensing scheme that separates manufacturing, wholesaling, and retailing interests into distinct tiers of operation to prevent “tied houses” and other forms of vertical integration in the distribution and sale of beverages containing alcohol. See *The Hunter-Gatherer, LLC, d/b/a the Hunter-Gatherer Brewery, Petitioner*, No. 16-ALJ-17-0031-CC (May 2, 2016) (citing John D. Geathers & Justin R. Werner, *The Regulation of Alcoholic Beverages in South Carolina* 241 (SC Bar 2007)). There is a longstanding precedent of South Carolina restricting and regulating integration, influence, and financial interest across multiple tiers in the beer industry, exemplified in pertinent case law and a body of material produced by governmental and regulatory actors such as the South Carolina Attorney General and the Alcoholic Beverage Control Commission. “Effect has been accorded to various regulatory provisions governing business relations between retailers and manufacturers or wholesalers.” *Op. S.C. Att’y Gen.* (issued Aug. 9, 1995) at 3 (citing 48 C.J.S. Intoxicating Liquors § 440). The regulatory regimes of South Carolina and other states establish “a three-tier system that strictly separates ownership and operations between manufacturers, wholesalers, and retailers and strictly prohibits the vertical integration of the manufacture, distribution, or sale of

alcoholic beverages.” 48 C.J.S. Intoxicating Liquors § 440. Moreover, the boundaries of the three-tier system in South Carolina are delineated by statutory provisions that preclude transactions and relationships between businesses in different tiers that, while not strictly violating the three-tiered scheme, might lead to entanglements that compromise its effectiveness. See *Geathers* at 243. The bedrock of the three-tier system is the prevention of entanglements that would constitute vertical integration or tied houses, and for this reason an extensive set of actions on the part of manufacturers and wholesalers are explicitly prohibited by statute. “[M]ost, if not all, of the States, including our own, have prohibited [any] furnishing by manufacturers or distributors of buildings, bars, equipment, or loans of money to a retailer.” *Weisberg v. Taylor*, 409 Ill. 384, 389, 100 N.E.2d 748, 751 (1951). Wholesalers are prohibited by statute and common law from actions which are meant to curry favor with retailers such that the wholesaler could gain influence over the retailer, *regardless* of whether that influence is ever realized or utilized in such a way that is detrimental. “Proof regarding a violation does not require an actual showing of influence by a brewer or wholesaler upon the product choices of a retailer; rather, tied-house laws are specifically designed to alleviate the need for a showing, which is why the Legislature broadly chose to bar the described relationships whether they exist directly or indirectly. See *Op. S.C. Att’y Gen.*, August 9, 1995 at 4 (citing *Miller Brands-Milwaukee v. Case*, 156 Wis.2d 800, 457 N.W.2d 896 (1990)). South Carolina law – specifically S.C. Code §§ 61-4-940 and 61-4-735 – categorically prohibits explicitly listed actions on the part of the wholesaler and does *not* require that the wholesaler's prohibited activities constitute an attempt to gain control over the retailer for the statute to be implicated. See *Id.* Merely the wholesaler’s act of furnishing, giving, or lending something of value to a retailer, regardless of the context or intended outcome, is prohibited. This broad sweeping prohibition of any furnishing or conveyance – regardless of whether it is meant to curry favor or influence – sufficiently and necessarily diminishes the possibility of abuse, partnership, or coercion which could easily arise from such an act.

S.C. Code § 61-4-940 (along with § 61-4-735 to which the entirety of this memo also applies) is functionally a prohibitory statute – with explicit exceptions – designed to establish and enforce the strict separations between the three tiers of the beer industry. S.C. Code § 61-4-940 states that “a manufacturer, brewer, importer, or wholesaler of beer, or a person acting on his behalf, must not furnish, give, rent, lend, or sell, directly or indirectly, to the holder of a retail

permit any equipment, fixtures, free beer, or service.” The stringent prohibitions outlined by this statute are comprehensive and clear. To that end, S.C. Code § 61-4-940 proscribes on its face the furnishing giving, renting, lending or selling of *any* equipment by a licensed beer wholesaler to any holder of a retail beer permit. See *Op. S.C. Att’y Gen.*, August 9, 1995 at 2. “Such statutes exist primarily to remove influence by the manufacturer over the wholesaler and the wholesaler over the retailer which might result in preference for a particular product.” *Id* at 4 (citing 48 C.J.S. Intoxicating Liquors, § 226). “The question of ‘influence’ has [generally] been determined by the Legislature to be inherent in the furnishing of any particular gift or equipment.” *Id* at 5. It has been argued that a distinction should be made between a wholesaler providing equipment relating to the sale of beer and wine as opposed to the same wholesaler providing equipment for use on the non-alcohol side of the retailer's business. “However, the fact that the wholesaler and retailer warrant or contractually agree that such equipment will be used exclusively for another non-alcohol purpose does not appear to be relevant to the General Assembly's intent in enacting these provisions.” *Id.* S.C. Code § 61-4-940 “proscribes on its face the ‘giving, renting, lending or selling’ of any equipment by a licensed beer wholesaler to a holder of a retail permit, *regardless* of whether such equipment is given in the capacity of a beer wholesaler or that of a distributor of soft drinks.” *Op. S.C. Att’y Gen.*, August 9, 1995 at 2 (emphasis added). The prohibition enacted by the legislature through the statute is not limited by, nor concerned with, the nature of the thing which is being given, loaned, or otherwise conveyed to the retailer by the wholesaler; rather, the legislature enacted the statute to prevent the control of the retail space by wholesalers, manufacturers, or importers through the power of credit, which would not depend upon the nature of the consideration out of which the credit arose. See *Id.* (citing *James J. Sullivan, Inc. v. Cann's Cabins*, 309 Mass. 519, 36 N.E.2d 371 (1941). “It is for the legislature to determine when and where conditions exist [to forestall] existing evils, and, when the legislature has acted, a presumption arises that the act is [valid].” *Weisberg v. Taylor*, 409 Ill. 384, 389, 100 N.E.2d 748, 751 (1951). “The restriction or curbing of credit by legislative enactment is but a logical extension of these prohibitions and is directly connected with the evils long recognized in the ‘tied house.’” *Id.* Therefore, the Department shall not contest the presumption that a reasonable basis exists for the conclusion of the legislature that credit and benefit extended by a distributor to a retailer has within itself such inherent potential for abuse that the legislature resolved to explicitly categorize such extensions of credit and benefit as unlawful. “[T]he

purpose of the ‘three tier’ law would be thwarted if we were to conclude that the statute was not violated where a beer wholesaler gave ‘equipment’ to the retailer so long as the purpose was not to use that equipment for a purpose related to the sale of beer.” *Op. S.C. Att’y Gen.* (August 9, 1995) at 8. Moreover, any assertion that S.C. Code § 61-4-940 does not prohibit certain giving, renting, or lending actions by a wholesaler must be predicated on a contention that the statute is *too* comprehensive and *too* sweeping by prohibiting giving, renting, and lending actions that are not directly related to the sale of beer. S.C. Code § 61-4-940 does expressly prohibit such transactions – it closes the loopholes – and in doing so fulfills the clear and lawful purpose of precluding the formulation of tied houses. See *Id* at 5 (citing *State v. Zazzaro*, 128 Conn. 160, 20 A.2d 737 (1941)). This purpose is neither arbitrary, nor unreasonable, and the prohibition of *any* furnishing, giving, renting, or lending action on the part of the wholesaler has a direct and rational relation to this purpose. See *Id.* “Accordingly, an [unlawful furnishing] is deemed to [have occurred] whether or not equipment is provided to the retailer for the purpose of the retailer’s storing beer or whether such equipment is provided with some other purpose, such as the placing of soft drinks therein.” *Op. S.C. Att’y Gen.* (August 9, 1995) at 7.

II. A licensed beer or wine wholesaler is authorized by S.C. Code §§ 61-4-940(C) & 61-4-735(C) to furnish at no charge to a beer or wine retail permit holder services explicitly enumerated by the statutes, draft beer or wine equipment replacement parts of nominal value, other equipment used to dispense beer or wine besides an establishment’s taps, point of sale advertising specialties, and product displays pursuant to the provisions of 27 C.F.R., Section 6.83, excluding electronic refrigeration equipment.

While S.C. Code § 61-4-940(B) prohibits any bestowment action by a wholesaler to a retailer, S.C. Code § 61-4-940(C) provides explicit, lawful exceptions. S.C. Code § 61-4-940(C) is narrowly tailored and should thus be narrowly interpreted. “[O]rdinarily, a strict or narrow construction is applied to statutory exceptions to the operation of laws, and it has been said that a liberal construction of a statute requires a narrow construction of its exceptions.” 73 Am. Jur. 2d Statutes § 195 “If a statute’s language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion . . . to look for or impose another meaning.” *Paschal v. State Election Comm’n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995) (citing *Miller v. Doe*, 312 S.C. 444, 441 S.E.2d 319 (1994)). “Where the terms of the statute are clear, [those terms must be

applied] according to their literal meaning.” *Id.* (citing *Adkins v. Varn*, 312 S.C. 188, 439 S.E.2d 822 (1993)). “Thus, in the resolution of ambiguities, courts favor a general provision over an exception, and a person seeking to be excluded from the operation of the statute must establish that the exception embraces such person.” 73 Am. Jur. 2d Statutes § 195. The lawful, acceptable practices on the part of wholesalers outlined in S.C. Code § 61-4-940(C) are narrowly and explicitly enumerated exceptions to what are otherwise categorically barred business practices under S.C. Code § 61-4-940(B). Pursuant to S.C. Code § 61-4-940(C) a wholesaler may offer the following services: cleaning draught lines, setting boxes, rotating stock, affixing price tags to beer products, and building beer displays. It should be noted that “developing shelf schematics” and “stocking shelves” are also explicitly authorized by S.C. Code § 61-4-735, to which the entirety of this memorandum also applies since S.C. Code § 61-4-735 is essentially almost a carbon copy of S.C. Code § 61-4-940 except it pertains to wine instead of beer. Only these services that are explicitly mentioned in S.C. Code §§ 61-4-940(C) and 61-4-735(C) are permitted for a wholesaler to bestow to a retailer. The Department holds that the services authorized by the statutes are literal. “If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, [that language must be applied] according to [the clear and definite] meaning. *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995). Therefore, under S.C. Code § 61-4-940(C), a holder of a beer wholesaler permit may offer a retailer the service of building beer displays, but may not offer the service of building a display for product(s) other than beer because the statute explicitly lists “building beer displays” in clear, plain language that authorizes the furnishing of a particular service where all other like services not there listed are prohibited by S.C. Code §§ 61-4-940(B) and 61-4-735(B). Moreover, as discussed in the previous section of this memorandum, the fact that such a service would be bestowed in a capacity that does not relate to the sale or advertisement of beer specifically is irrelevant when the bestower is the holder of a beer or wine wholesale permit and the recipient is the holder of a beer or wine retail permit because such an action is categorically prohibited by law. The law reads “a wholesaler must not furnish” – a prohibition that is clear and unambiguous. Only the furnishing of services explicitly authorized by S.C. Code §§ 61-4-940(C) and 61-4-735(C) are lawful for any holder of a wholesaler permit, with all other services furnished to retailers being prohibited under the law.

In addition to the *services* explicitly outlined in S.C. Code §§ 61-4-940(C) and 61-4-735(C), holders of beer or wine wholesaler permits may furnish at no charge to retail permit holders (1) draft equipment replacement parts of nominal value, (2) party wagons for temporary use, (3) point of sale advertising specialties, and (4) product displays as defined by 27 C.F.R., Section 6.83 excluding electronic refrigeration equipment. “[Draft] equipment replacement parts of nominal value” is fairly self-explanatory, and S.C. Code § 61-4-940(C) lists the replacement parts that are explicitly authorized: “washers, gaskets, hoses, hose connectors, clamps, and tap markers.” ABC Bulletin 91-4 defines “party wagons” as other equipment used to dispense beer besides an establishment’s draft taps. See *Id.* at 1. “Temporary use means for a period not to exceed 72 hours.” *Id.* “Wholesalers may furnish a driver or custodian for loaned party wagons and someone to connect the taps[, but a wholesaler] may not furnish employees to operate the taps or dispense the beer.” *Id.* at 2.

For purposes of examining the third and fourth categories of statutorily authorized furnishings, “point of sale advertising specialties” and “product displays” can be grouped into the larger category of advertising articles, or any item or article which is given by a manufacturer or wholesaler to a retailer to advertise product, whether directly or incidentally. Advertising articles furnished to a retailer by a wholesaler must fall under 27 CFR § 6.83 or 27 CFR § 6.84 to constitute a permissible furnishing. The adoption of 27 CFR § 6.83 in S.C. § 61-4-940(C) designates the Federal regulation as providing the definition for the “product displays” which may be lawfully furnished under § 61-4-940(C). S.C. Code § 61-4-940(C) explicitly prohibits the furnishing of refrigeration equipment by a wholesaler to a retailer. This means that any holder of a Beer and Wine Wholesaler/Distributor Permit is explicitly prohibited by S.C. Code § 61-4-940 from furnishing any licensed beer or wine retailer with any type of refrigeration equipment. “[T]he General Assembly proscribes on its face the ‘giving, renting, lending or selling’ of any equipment by a licensed beer wholesaler to a holder of a retail permit, regardless of whether such equipment is given in the capacity of a beer wholesaler.” *Op. S.C. Att’y Gen.* (issued Aug. 9, 1995). Because all beer and wine wholesalers in South Carolina hold the same permit, S.C. Code § 61-4-940 prohibits the furnishing of any refrigeration equipment by any licensed beer *or wine* wholesaler.

Pursuant to 27 CFR § 6.83, product display means “any wine racks, bins, barrels, casks, shelving, or similar items the primary function of which is to hold and display consumer

products.” “The total value of all product displays given or sold by a wholesaler or its agents must not exceed \$300 per brand at any one time in any one retail establishment.” *Id.*

Furthermore, “giving or selling of such product displays may be conditioned upon the purchase of the distilled spirits, wine, or malt beverages advertised on those displays in a quantity necessary for the initial completion of such display.” *Id.* However, the wholesaler cannot impose any other conditions on the retailer in order for the retailer to receive or obtain the product display. *Id.* Furthermore, the explicit adoption of 27 CFR § 6.83 would also suggest that 27 CFR § 6.84 can, at the very least, provide guidance regarding what “point of sale advertising specialties” may be lawfully furnished. 27 CFR Part 6 “Tied House” prohibits “furnishing, giving, renting, lending, or selling to the retailer, any equipment, fixtures, signs, supplies, money, services or other thing of value, subject to the exceptions contained in subpart D” and likewise prohibits “furnishing, giving, renting, lending, or selling any equipment, fixtures, signs, supplies, money, services, or other things of value to a retailer constitutes a means to induce within the meaning of the Act.” These prohibitions coincide with the prohibitions of S.C. Code §§ 61-4-940 and 61-4-735 such that there can be presumed congruency between the lawful allowances of 27 CFR §§ 6.83 and 6.84 and those “furnishing” practices authorized by S.C. Code §§ 61-4-940(C) and 61-4-735(C). Advertising articles furnished by a retailer *must* fall under either § 6.83 Product displays or § 6.84 Point of sale advertising materials because all other “furnishings” are categorically prohibited by S.C. Code §§ 61-4-940(B) and 61-4-735(B), regardless of the purpose of the advertising article conveyed or the intent of the conveyance. The Federal regulations provide for a categorical lawfulness that serves as an exception to the categorical unlawfulness of any furnishing or conveyance. Moreover, the fact that the wholesaler and retailer warrant or contractually agree that equipment will be used exclusively for another non-alcohol purpose does not appear to be relevant to the General Assembly's intent in enacting these provisions. See Op. S.C. Att’y Gen. (issued Aug. 9, 1995) at 7. “The courts have held that ‘equipment’, is ‘equipment’ regardless for what purpose it is used. *Id.* (citing *Tri-City Beer Company v. Nebraska Liquor Control Commission*, 195 Neb. 278, 237 N.W.2d 852 (1976)). There is no permissible purpose or intent of a furnished article which can cause that furnished article to be outside the scope of the broad reaching prohibitions of S.C. Code §§ 61-4-940(B) and 61-4-735(B); rather, the only exceptions to those prohibitions are explicitly outlined in S.C. Code §§ 61-4-940(C) and 61-4-735(C), along with the corresponding Federal regulations.

Advertising articles or articles of value furnished to a retailer by a wholesaler must fall under § 6.83 Product displays or § 6.84 point of sale advertising specialties, or else they are categorically prohibited. This comprehensively includes any article which is not statutorily excepted by S.C. Code §§ 61-4-940(C) and 61-4-735(C) and which does *not* relate to the storage or sale of beer or wine – those items *are* likewise prohibited. The prohibitions against furnishings by wholesalers to retailers are broad sweeping, and non-beer and non-wine related items are *not* categorically excepted from those prohibitions under the law and thus may not be lawfully conveyed.

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