



ALAN WILSON
ATTORNEY GENERAL

August 9, 2016

The Honorable Mark Hammond
South Carolina Secretary of State
1205 Pendleton Street
Columbia, SC 29201

Dear Mr. Hammond,

Attorney General Alan Wilson has referred your letter dated July 5, 2016 to the Opinions section regarding this Office's interpretation of the duration of limited partnerships contained in S.C. Code Ann. § 33-42-75. Per your letter, you explain:

In 2001, the Uniform Limited Partnership Act was amended to include § 33-42-75, which includes the statement that a limited partnership may not exist for more than ten years from the date of its creation, and may not be recreated, renewed, or extended beyond that date. Section 33-42-75 appears to specifically reference manufacturers, brewers, and importers of beer. Furthermore, Act 76 of 2001, which amended the Uniform Limited Partnership Act to include § 33-42-75, exclusively addressed issues involving beer, wine, and other alcoholic beverages. The question posed by our constituent is whether the ten year duration provided in § 33-42-75 only applies to limited partnerships involved in the manufacturing, brewing, and importing of beer, or applies to all limited partnerships.

Short Answer

It is this Office's opinion that the maximum ten year duration for limited partnerships set forth in S.C. Code Ann. § 33-42-75 only applies to a limited partnership in which a manufacturer, brewer, or importer of beer, or its affiliate holds an interest and which provides financial assistance to a general partner wholesaler.

Law/Analysis

To our knowledge, no South Carolina decision has addressed the scope of this statute's application. Statutory interpretation of Section 33-42-75 of the South Carolina Code of Laws requires a determination of the General Assembly's intent. *Mitchell v. City of Greenville*, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where the statutes' language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." *State v. Henkel*, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), reh'g denied (Aug. 5, 2015). However, the Supreme Court of South Carolina has stated that where the plain meaning of the words in a statute "would lead to a result so

plainly absurd that it could not have been intended by the General Assembly... the Court will construe a statute to escape the absurdity and carry the [legislative] intention into effect.” Duke Energy Corp. v. S. Carolina Dep’t of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) (“[C]ourts are not confined to the literal meaning of a statute where the literal import of the words contradicts the real purpose and intent of the lawmakers.”).

With these principles in mind we turn to the text of the statute. Section 33-42-75 reads as follows:

Any manufacturer, brewer, or importer of beer as referenced in Section 61-4-1115, or its affiliate may hold an interest in a limited partnership providing financial assistance to a general partner wholesaler, but may only exercise that control of the limited partnership business as is permitted by this Uniform Limited Partnership Act. However, in no event may the limited partner, directly or indirectly, have any managerial control or decision-making authority including personnel decisions, with respect to the day-to-day operations of the limited partnership, and upon a default by the general partner wholesaler, the limited partner is not entitled, directly or indirectly, to any additional control, ownership, or financial interest in the general partner wholesaler, nor may the limited partner become the general partner in the limited partnership. No manufacturer, brewer, or importer of beer or its affiliate licensed in this State, directly or indirectly, may have any financial or ownership interest in the general partner wholesaler. It is further declared an unfair trade practice for any manufacturer, brewer, or importer of beer or its affiliate holding an interest in a limited partnership providing financial assistance to a general partner wholesaler pursuant to this section to have directly or indirectly any managerial control or decision-making authority, including personnel decisions, with respect to the day-to-day operations of the limited partnership.

The only financial assistance that may be provided under the provisions of this section is the initial financial assistance to the limited partnership to acquire a licensed beer wholesaler. In this arrangement for financial assistance, the federal basic permit and the wholesaler's license issued by the department must be issued in the name of the general partner wholesaler on behalf of the limited partnership, and not in the name of the limited partnership nor in the name of the manufacturer, brewer, or importer or its affiliate.

The limited partnership may not exist for more than ten years from the date of its creation and may not be recreated, renewed, or extended beyond that date. The limited partnership shall not be considered as amending or otherwise altering Title 61 except for the limited purposes permitted in this section in connection with a manufacturer, brewer, or importer of beer or its affiliate who is licensed in this State providing the financial assistance. A manufacturer, brewer, or importer or its affiliate shall not mandate, directly or indirectly, that a wholesaler use the financial assistance as described in this section. A violation of this section is deemed to be a violation of the South Carolina Unfair Trade Practices Act.

Based on the language and structure of the statute, it is this Office's opinion that intent of the General Assembly is for the maximum ten year duration to apply solely to limited partnerships created under this section. The first and last sentences of the first paragraph contain the only references to "a limited partnership." These references introduce the subject of the statute, which is a limited partnership in which "any manufacturer, brewer, or importer of beer or its affiliate hold[s] an interest in a limited partnership providing financial assistance to a general partner wholesaler." All other references to "limited partnership" within the statute use the definite article "the" and a singular noun. "The" is used to refer to a person or thing that is already known to the reader or which has been previously mentioned, introduced or discussed.¹ The use of the definite article and the singular noun show that the General Assembly intended these references to "limited partnership" to merely refer to limited partnerships addressed by the statute, not all limited partnership addressed in the Uniform Limited Partnership Act, S.C. Code Ann. §§ 33-42-10 *et seq.* See Holman v. Bulldog Trucking Co., 311 S.C. 341, 346, 428 S.E.2d 889, 892 (Ct. App. 1993).

As noted in your letter, the legislative history of the Section 33-42-75 makes clear that the statute was created as part of a bill meant to address issues involving beer, wine, and other alcoholic beverages. Six of the seven statutes created or amended by Act No. 76 of 2001 are found in Title 61 of the South Carolina Code of Laws relating to Alcohol and Alcoholic Beverages. In relevant part, the Act states it is meant "to amend Chapter 42, Title 33, relating to the Uniform Limited Partnership Act, by adding Section 33-42-75 so as to provide limited partnership authority with other limitations for an importer of foreign beer." Id. Further, Section 6 of the Act, wherein Section 33-42-75 is created, is listed under the header "Importer of foreign beer has limited partnership authority, limited financial assistance, limited partnerships exist for only ten years." Id.² The structure of the Act and the language describing the addition of Section 33-42-75 demonstrates the General Assembly's intent was to amend statutes relating to alcoholic beverages rather than to alter all limited partnerships created under the Uniform Limited Partnership Act.

This conclusion finds further support when the statute is read within the context of South Carolina Code of Laws Section 33-42-210 regarding the formation of a limited partnership. This section reads as follows:

- (a) In order to form a limited partnership, a certificate of limited partnership must be executed and filed in the office of the Secretary of State. The certificate shall set forth:

¹ "The" is a definite article, which, according to the American Heritage College Dictionary (3d ed. 1993), is a member of the class of determiners that restrict or particularize a noun. See also Merriam-Webster Online, "definite article" <http://www.merriam-webster.com/dictionary/definite%20article>, ("the word 'the' [is] used in English to refer to a person or thing that is identified or specified").

² The heading of Section 33-42-75, which reads "Limited partnership activities, financial assistance, and duration," could be interpreted to expand its application to all limited partnerships. However, the Supreme Court of South Carolina has explained that the Code Commissioner "is to '[c]ompile the public statutes of the State.'... The Code Commissioner is only authorized to '[c]orrect typographical and clerical errors.' He is not authorized to make any other changes by way of addition or deletion to the existing laws." State v. Huntley, 349 S.C. 1, 4, 562 S.E.2d 472, 473 (2002) (internal citations omitted); The Code Commissioner acts outside his statutory authority when he makes substantive changes. Huntley, 349 S.C. at 4-5, 562 S.E.2d at 474. It is this Office's opinion that such an interpretation would be based on a substantive change and contrary to the intent of the General Assembly as expressed in Act No. 76 of 2001.

- (1) the name of the limited partnership;
- (2) the address of the office and the name and address of the agent for service of process required to be maintained by § 33-42-50;
- (3) the name and a mailing address of each general partner;
- (4) The latest date upon which the limited partnership is to dissolve; and
- (5) any other matters the partners determine to include therein.

...

S.C. Code Ann. § 33-42-210 (1976 Code, as amended) (emphasis added). The text of this statute makes clear that the duration of a limited partnership can extend until the date it is set to dissolve as indicated in the certificate of limited partnership. There is no temporal limitation for setting the date upon which the limited partnership is to dissolve.³ If the General Assembly meant to require all limited partnerships to dissolve by ten years after their formation, Section 33-42-210(a)(4) likely would have been amended to clarify the requirements for filing the certificate of limited partnership. Indeed, to affect such a dramatic change in traditional business expectations regarding the duration of the limited partnership would lead to an absurd result which cannot be supported without a clearer statement of legislative intent. Because Act No. 76 of 2001 did not amend Section 33-42-210 or any other section of the Uniform Limited Partnership Act, it is unlikely the General Assembly meant to alter the statutory scheme beyond the comparatively narrow situation of limited partnerships created under Section 33-42-75.

This interpretation is not free from criticism. The first and second paragraph of Section 33-42-75 both contain phrases which explicitly restrict their application to “this section.” While the third paragraph, where the maximum ten year duration is recorded, does contain a similar restriction, it merely clarifies that Title 61 is not amended “except for the limited purposes permitted in this section.” The restriction does not expressly modify the maximum ten year duration such that it applies only to limited partnerships under this section. However, considering the structure of the Section 33-42-75 in its entirety, the legislative history, and the other sections of the Uniform Limited Partnership Act, it is this Office’s opinion that the General Assembly intended for the maximum ten year duration to apply only to limited partnerships formed under this section.

Conclusion

For the reasons discussed above, it is this Office’s opinion that the maximum ten year duration for limited partnerships set forth in S.C. Code Ann. § 33-42-75 only applies to a limited partnership in which a manufacturer, brewer, or importer of beer, or its affiliate holds an interest and which provides financial assistance to a general partner wholesaler. This Office is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See

³ See Thomas A. Brumgardt, The Abs of Entity Choice, S.C. Law., March 2006, at 14, 16–17 (“Subject to certain exceptions, general partners and limited partners may withdraw from the limited partnership at any time without causing dissolution of the limited partnership. *See* S.C. Code Ann. §§ 33-42-1020, -1030, -1410(4) (Law Co-op. 1990 & West Supp. 2004). This means that a limited partnership may have perpetual duration.”); § 110. Nature, Purpose, and Duration of Limited Partnership., Unif.Ltd.Part.Act 2013 § 110(c) (“A limited partnership has perpetual duration.”).

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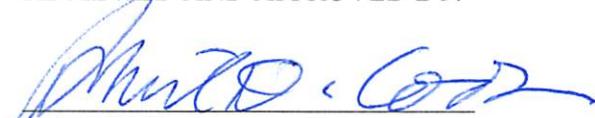
S.C. Code § 15-53-20 (1976 Code, as amended). If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General