

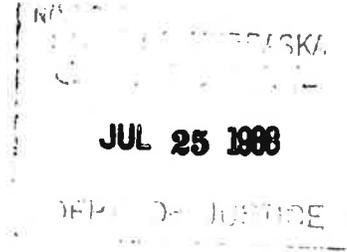
DEPARTMENT OF JUSTICE

STATE OF NEBRASKA

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DATE: July 21, 1988

SUBJECT: Purchase, sale and borrowing of products between liquor and beer wholesalers.

REQUESTED BY: Forrest D. Chapman, Executive Director, Nebraska Liquor Control Commission.

WRITTEN BY: Susan M. Ugai, Assistant Attorney General

Issue: Whether the Nebraska Liquor Control Act prohibits a wholesaler from purchasing or borrowing products from another wholesaler.

Conclusion: The purchase of beer by a wholesaler from a wholesaler is not precluded. Borrowing between beer distributors is not precluded.

The purchase of distilled spirit and wine by a distributor from a distributor is not precluded. Borrowing between distilled spirits and wine distributors is precluded.

Discussion: Neb.Rev.Stat. §53-103 (11) (1987 Supp.) provides that a distributor or wholesaler "shall mean the person, importing or causing to be imported into the state, or purchasing or causing to be purchased within the state, alcoholic liquors for the sale or resale to retailers licensed under this act, whether the business of the . . . wholesaler. . . is conducted under the terms of a franchise or any other form of an agreement with a manufacturer . . . , or has caused alcoholic liquors to be imported into the state or purchased

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in the state from a manufacturer . . . and was licensed to conduct such a business by the commission. . ."

Neb.Rev.Stat. §53-123 (1986 Cum.Supp.) provides for various classes of licenses, which include manufacturers, alcoholic liquor distributors, beer distributors and retailers.

Neb.Rev.Stat. §53-123.02 (Reissue 1984) provides for the rights of alcoholic liquor distributor licensees. It provides in relevant part: "An alcoholic liquor distributor's license (except beer) shall (1) allow the wholesale purchase, importation, and storage of alcoholic liquors and sale of alcoholic liquors (except beer) to licensees in this state and to such persons without the state as may be permitted by law. . ."

Neb.Rev.Stat. §53-123.03 (Reissue 1984) contains the rights of beer distributor licensees. It provides in relevant part: "A beer distributor's license shall allow the wholesale purchase, importation, and storage of beer and sale, including delivery of the brand or brands described in such license to licensees in this state in the sales territory prescribed in the license for each brand, and to such persons without the state as may be permitted by law; and shall allow the licensee to do all things incident to the carrying on of the wholesale beer business."

It is obvious from Neb.Rev.Stat. §53-103 (11) (1987 Supp.) that the terms distributor and wholesaler are synonymous under this act. The definition set out in that section only mentions sale or resale to retailers and refers to nothing regarding sale or resale to other wholesalers. If reference is only made to this section, it would appear as though a wholesaler would be precluded from selling to another wholesaler. However, one must also refer to Neb.Rev.Stat. §53-123.02 (Reissue 1984), which provides specifically for the rights of liquor distributor licensees. Wholesalers appear not to be precluded from selling to other wholesalers. That section allows the wholesale sale to "licensees" in this state. That broad language would, therefore, include other distributors, as distributors are

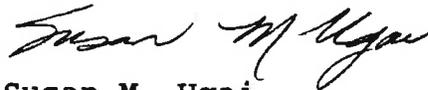
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"licensees" as provided in Neb.Rev.Stat. §53-123 (Reissue 1984). No language in Neb.Rev.Stat. §53-123.02 (Reissue 1984) allows borrowing of products between licensees. It only allows the wholesale purchase, importation, storage and sale, of alcoholic liquors. It thus appears as though borrowing products between wholesale liquor distributors is prohibited.

Neb.Rev.Stat. §53-123.03 (Reissue 1984), providing for beer distributors' rights, is worded slightly different than provisions relating to liquor distributors. In addition to allowing the wholesale purchase, importation, storage and sale of beer to licensees, it also has a very broad, vague clause allowing the licensee to "do all things incident to the carrying on of the wholesale beer business." Thus, if borrowing among beer distributors can be characterized as "incident to the carrying on of the wholesale beer business", it would permitted.

Respectfully submitted

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APPROVED BY:



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27-01-4