

Advertisements for shipment of alcoholic beverages

Number: INFORMAL

Date: July 31, 1998

The Honorable Steven A. Geller
Senator, District 29
400 South Federal Highway, Suite 204
Hallandale, Florida 33009

Dear Senator Geller:

This is in response to your request for an opinion as to the legality of advertisements for the direct shipment of alcoholic beverages to residents of this state from sources outside the state.

The Legislature has found that direct shipment by persons in the business of selling alcoholic beverages "poses a serious threat to the public health, safety, and welfare; to state revenue collections; and to the economy of the state." [1] Thus, any person in the business of selling alcoholic beverages who knowingly and intentionally ships any alcoholic beverage from an out-of-state location directly to any person in Florida who does not hold a valid manufacturer's or wholesaler's license or exporter's registration or who is not a state-bonded warehouse is in violation of state law. [2] Any person found in violation of the state law is issued a notice by certified mail to show cause why a cease and desist order should not be issued. Any person found to be in violation of the law within two years of being subject to a cease and desist order commits a felony of the third degree. [3]

As you note, this office previously has taken the position that the advertisement of gambling not authorized by Florida law may be considered false and misleading, leading to the conclusion that those engaged in such advertisement are engaged in an illegal activity for which they should be prosecuted. Likewise, advertisement for the direct shipment of alcoholic beverages to persons who are not licensed to receive such shipments is an advertisement for an illegal activity. In the instance where illegal gambling is facilitated by wire communications there is a federal law allowing local law enforcement agencies to advise the carrier of the illegality of the activity and to direct the carrier to discontinue services to the entity. However, no analogous federal law applicable to media used to advertise the direct shipment of alcoholic beverages has been brought to my attention, nor has one been found.

While the provisions in section 561.545, Florida Statutes, clearly address the direct shipment of alcoholic beverages, it would appear that clarification of the Legislature's intent to target the advertisement of such activity may be necessary. Until that time, law enforcement would have to rely upon the laws regarding false and misleading advertisement in order to target advertisements for direct shipments of alcoholic beverages.

Your perseverance in making others aware of the need to address the issue of advertisements for direct shipments of alcoholic beverages will most certainly be beneficial in attempts to bring about legislative action to address this matter.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Section 561.545, Fla. Stat.

[2] Section 561.545(1), Fla. Stat.

[3] Section 561.545(3), Fla. Stat.