COMMONWEALTH of VIRGINIA

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The Honorable David B. Albo
Member, House of Delegates
6350 Rolling Mill Place, Suite 102
Springfield, Virginia 22152

Dear Delegate Albo:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You pose several questions regarding the interpretation of § 4.1-218, which imposes limitations on wine and beer importers, and the application of the Wine Franchise Act and the Beer Franchise Act. First, you ask whether the applicable Act compels a winery or brewery, which replaces its previously authorized representative, to require that a newly authorized representative honor the distributor appointments made by the previous representative. You next ask whether the execution and filing of Attachments A and B[1] and the distributor's subsequent purchase of the wine or beer entitles a distributor terminated by a new representative to a presumption that the respective Act applies to the original distributor appointment. Additionally, you ask whether such winery or brewery, or authorized representative, bears the burden of proving that the Act does not apply. You further ask whether the execution and filing of Attachments A and B by a winery or brewery, or its authorized representative, and the exchange of purchase orders and invoices between an authorized representative and a distributor constitute a "written agreement[] of definite duration" pursuant to § 4.1-218. Finally, you ask whether a brewery or winery that offers a written agreement containing an express waiver or that fails to offer an appointed distributor a written agreement of a definite duration is bound by the respective Act.

Response

It is my opinion that the Wine Franchise Act or the Beer Franchise Act compels a winery or brewery to honor distributor appointments made by a prior authorized representative unless the winery or brewery provides a notice of intent to terminate the agreement with the distributor and good cause exists for the nonrenewal or noncontinuation of such agreement. Whether the requisite notice has been provided and good cause exists are factual determinations for the Virginia Alcoholic Beverage Control Board. It is further my opinion that an authorized representative cannot avoid application of either Act by requiring a waiver from the distributor because §§ 4.1-416 and 4.1-515 of the Franchise Acts prohibit such waivers. Additionally, it is my opinion that the execution and filing of Attachments A and B and the exchange of purchase orders and invoices between authorized representatives and distributors do not constitute a "written agreement[] of definite duration" pursuant to § 4.1-218.

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[1] I note that Attachments A and B referenced in this opinion and about which you inquire are attachments to an importer's license application. *See* VA. DEP'T OF ALCOHOLIC BEVERAGE CONTROL, "Applicants for Importer's Licenses," Attachments A and B at *5-6, *available at* http://www.abc.state.va.us/enforce/forms/importer.pdf.

For many years, Attorneys General of Virginia have concluded that § 2.2-505, which authorizes official opinions of the Attorney General, does not contemplate that such opinions be rendered on matters requiring factual determinations, rather than matters interpreting questions of law.[2] It is my opinion that the other matters about which you inquire require either a factual determination or are matters reserved to another entity. Therefore, I must respectfully decline to render an opinion regarding whether a specific contract provision or a contemplated termination violates either the Wine or Beer Franchise Act or whether a winery or brewery that fails to offer appointed distributors written agreements of definite duration falls outside the purview of the respective Act.

Background

You relate that authorized representatives are not affiliated through common ownership or control with the brewery or winery they purport to represent. Authorized representatives, or importers, act as independent contractors and are terminable at will. Pursuant to § 4.1-218, before an importer can sell, deliver, or ship any brand of beer or wine to wholesale licensees for resale, the importer must provide to the Virginia Alcoholic Beverage Control Board[3] written authorization from the brand owner to sell and deliver or ship its brands into the Commonwealth. Additionally, you note that § 4.1-218 requires importers to "file and maintain with the Board a current list of all wholesale licensees authorized by such importer, as the authorized representative of the brand owner, to distribute such brand within the Commonwealth." Further, you note that importer designations are recorded on Attachment A forms and filed with the Board, and wholesaler or distributor designations are recorded on Attachment B forms that are also filed with the Board. The Board maintains a website where this information is available to members of the industry and to the public.

You acknowledge that § 4.1-218 requires importers to provide the Virginia Alcoholic Beverage Control Board with written authorization of the brand owner which entitles them to "establish written agreements of a definite duration" "on behalf of the brand owner, ... with each wholesale licensee to whom the importer sells any brand of beer or wine owned by the brand owner." You also note that the definitions of "brewery" and "winery" include importers. You further acknowledge that the Wine and Beer Franchise Acts apply to agreements between wineries or breweries and their distributors whether or not the agreements are written and that the Acts prohibit breweries and wineries from requiring that distributors waive their rights.

Additionally, you ask that I assume that numerous distributor appointments are evidenced in writing only through the Attachment A and B forms, purchase orders between the distributor and the importer and between the importer and the brewery or winery, and invoices sent by the importers to the distributors. You ask that I assume that some distributor appointments are memorialized by the execution of definitive distribution contracts which state that when the winery or brewery terminates its authorized representative, all distributors previously appointed by that authorized representative automatically are terminated.

Applicable Law and Discussion

I. Whether Subsequent Importer Must Honor Designation by Prior Importer.

Chapter 4 of Title 4.1, §§ 4.1-400 through 4.1-418, comprises the Wine Franchise Act. Chapter 5 of Title 4.1, §§ 4.1-500 through 4.1-517, comprises the Beer Franchise Act. You first inquire whether the

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[2] *See, e.g.*, Op. Va. Att'y Gen.: 2003 at 99, 102; 1991 at 122, 124; 1986-1987 at 1, 6.

[3] *See* VA. CODE ANN. § 4.1-101 (1999) (creating Department of Alcoholic Beverage Control consisting of Virginia Alcoholic Beverage Control Board and its agents and employees).

Wine Franchise Act or the Beer Franchise Act compels a winery or brewery to require subsequent importers to honor the wholesaler designations made by prior importers or authorized representatives. Sections 4.1-401, 4.1-406, 4.1-407, 4.1-500, 4.1-505, and 4.1-506 are applicable to your inquiry. Sections 4.1-406 and 4.1-505, respectively, provide, in pertinent part, that:

> Notwithstanding the terms, provisions or conditions of any agreement, no [winery/brewery] shall unilaterally amend, cancel, terminate or refuse to continue to renew any agreement, or unilaterally cause a wholesaler to resign from an agreement, unless the [winery/brewery] has first complied with [§ 4.1-407/§ 4.1-506] and good cause exists for amendment, termination, cancellation, nonrenewal, noncontinuance or causing a resignation.

Sections 4.1-407 and § 4.1-506, respectively, provide that:

> A. Except as provided in subsection F, a [winery/brewery] shall provide a wholesaler at least ninety days' prior written notice of any [intention/intent] to amend, terminate, cancel or not renew any agreement....
>
> ....
>
> F. No notice shall be required and an agreement may be immediately amended, terminated, cancelled or allowed to expire if the reason for the amendment, termination, cancellation or nonrenewal is:
>
> 1. The bankruptcy or receivership of the wholesaler;
>
> 2. An assignment for the benefit of creditors or similar disposition of the assets of the [business,/business] other than the creation of a security interest in the assets of a wholesaler for the purpose of securing financing in the ordinary course of business; or
>
> 3. Revocation of the wholesaler's license.

Section 4.1-401 provides that:

> *"Winery"* means every person, including any authorized representative of such person pursuant to § 4.1-218, which enters into an agreement with any Virginia wholesale wine licensee and (i) is licensed as a winery or is licensed as a Virginia farm winery, (ii) is licensed as a wine importer and is not simultaneously licensed as a wine wholesaler, (iii) manufactures or sells any wine products, whether licensed in the Commonwealth or not, or (iv) without regard to whether such person is licensed in the Commonwealth, has title to any wine products, excluding Virginia wholesale licensees and retail licensees, and has the manufacturer's authorization to market such products under its own brand or the manufacturer's brand.

Section 4.1-500 provides that:

> *"Brewery"* means every person, including any authorized representative of such person pursuant to § 4.1-218 which (i) is licensed as a brewery located within the Commonwealth, (ii) holds a beer importer's license and is not simultaneously licensed as a beer wholesaler, or (iii) manufactures any malt beverage, has title to any malt beverage products excluding licensed Virginia wholesalers and retailers or has the contractual right to distribute under its own brand any malt beverage product whether licensed in the Commonwealth or not, who enters into an agreement with any beer wholesaler licensed to do business in the Commonwealth.

Statutory construction requires that words be given their ordinary meaning, given the context in which they are used.[4] This certainly is the case when the words are not expressly defined by statute.[5] Absent a statutory definition, the plain and ordinary meaning of the term is controlling.[6] "'The manifest intention of the legislature, clearly disclosed by its language, must be applied.'"[7]

Applying the rules of statutory construction, it is apparent that the protections afforded wholesalers under the Wine and Beer Franchise Acts regarding a winery or brewery's decision to terminate, cancel, or not renew distribution agreements depend upon whether the notice and good cause requirements set forth in §§ 4.1-406 or 4.1-505 and 4.1-407 or 4.1-506 are met. Employing a plain meaning analysis here shows that the business relationship between a winery and a wholesaler, or a brewery and a wholesaler, cannot be unilaterally changed by a winery or brewery, even where the parties agree, unless the notice and good-cause requirements are met. This is apparent because the word "notwithstanding," employed in §§ 4.1-406 and 4.1-505, while not defined by statute, means "[d]espite; in spite of."[8] Thus, in spite of what the terms, conditions, or provisions of any agreement between the parties might say, no winery or brewery may take such unilateral action, unless the procedural requirements of the respective Act are met.

Because §§ 4.1-407(A) and 4.1-506(A) provide that a winery or brewery "shall" provide a wholesaler the requisite notice, "[e]xcept as provided in subsection F," a winery or brewery must afford a wholesaler the notice of intent to terminate unless one of the circumstances in § 4.1-407(F) or § 4.1-506(F)[9] applies. The word "shall" used in a statute ordinarily implies that its provisions are mandatory.[10] In the context of §§ 4.1-407(A) and 4.1-506(A), "shall" is mandatory rather than permissive. Otherwise, the exceptions created in §§ 4.1-407(F) and 4.1-506(F) would be meaningless.[11] In other words, the winery or brewery must provide a wholesaler the requisite notice other than for a wholesaler in bankruptcy, one undergoing an assignment for the benefit of creditors, or one whose license has been revoked.

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[4] City of Va. Beach v. Bd. of Supvrs., 246 Va. 233, 236, 435 S.E.2d 382, 384 (1993); *see also* 2003 Op. Va. Att'y Gen. 3, 4.

[5] *See* McKeon v. Commonwealth, 211 Va. 24, 27, 175 S.E.2d 282, 284 (1970).

[6] *See* Sansom v. Bd. of Supvrs., 257 Va. 589, 594-95, 514 S.E.2d 345, 349 (1999); Va. Dep't of Taxation v. Orange-Madison Coop. Farm Serv., 220 Va. 655, 658, 261 S.E.2d 532, 533-34 (1980); Op. Va. Att'y Gen.: 2003 at 137, 138; *id.* at 104, 106.

[7] Barr v. Town & Country Props., Inc., 240 Va. 292, 295, 396 S.E.2d 672, 674 (1990) (quoting Anderson v. Commonwealth, 182 Va. 560, 566, 29 S.E.2d 838, 841 (1944)); *see also* 2002 Op. Va. Att'y Gen. 297, 299.

[8] *See* BLACK'S LAW DICTIONARY 1094 (8th ed. 2004).

[9] The circumstances referred to are the bankruptcy or receivership of the wholesaler, an assignment for the benefit of creditors of the assets of the wholesaler, or the revocation of the wholesaler's license. In such cases, notice is not required prior to the amendment, termination, cancellation, or expiration of an agreement.

[10] *See, e.g.*, Schmidt v. City of Richmond, 206 Va. 211, 218, 142 S.E.2d 573, 578 (1965) (noting that statute using "shall" required court to summon nine disinterested freeholders in condemnation case); *cf.* Ladd v. Lamb, 195 Va. 1031, 1035-36, 81 S.E.2d 756, 758-59 (1954) (noting that statute providing that clerk of court "shall forward" copy of conviction to Commissioner of Department of Motor Vehicles within fifteen days is not mandatory, but merely directory); *see also* 1986-1987 Op. Va. Att'y Gen. 210, 211 ("shall" frequently is construed to be directory when used to specify time within which public official is to act); 17 MICHIE'S JUR. *Statutes* § 60, at 436-37 (1994).).

[11] An important rule of statutory construction is that "'every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary.'" *Sansom*, 257 Va. at 595, 514 S.E.2d at 349 (quoting Hubbard v. Henrico Ltd. P'ship, 255 Va. 335, 340, 497 S.E.2d 335, 338 (1998)).

The definitions of winery and brewery include authorized representatives designated pursuant to § 4.1-218. This means that the notice and good cause requirements, which apply to wineries and breweries under the Wine and Beer Franchise Acts, also apply to authorized representatives. Thus, as a general matter, unless the notice of intent to terminate and good cause requirements are met, an authorized representative may not terminate distributor appointments.

Various provisions of the Wine and Beer Franchise Acts provide that wineries or breweries can amend, terminate, cancel, or refuse to continue or renew an agreement after providing notice of intent and having good cause so to do.[12] However, the winery or brewery incurs the risk that the Virginia Alcoholic Beverage Control Board may upon the wholesaler's request find that the action was without good cause and impose the appropriate remedy.[13] Such an interpretation is also consistent with a wholesaler's ability to request a hearing pursuant to § 4.1-407 or § 4.1-506 and the right of free association embodied in §§ 4.1-417 and 4.1-516.[14]

Ultimately, whether a distributorship agreement may be terminated under the Wine Franchise or Beer Franchise Act is a factual determination. For many years, Attorneys General of Virginia have concluded that § 2.2-505 does not contemplate that such opinions be rendered on matters requiring factual determinations.[15] Therefore, I must respectfully decline to render an opinion regarding whether a specific contract provision or a contemplated termination is violative of either Act.

II. Establishment of Presumption.

The filing of Attachments A and B and the distributor's subsequent purchase and shipment of the wine or beer at issue establish a presumption that the protections of the Wine or Beer Franchise Act apply to the original wholesaler appointments and shift the burden of proof on that issue to the winery, brewery, or authorized representative. The filing of Attachment A does not establish proof of an agency relationship between the winery or brewery and the importer, or authorized representative, sufficient to bind subsequent importers designated by the winery or brewery to the wholesaler designations previously filed by the prior authorized representative as a matter of agency law. Certain actions, however, constitute *prima facie* evidence of an "agreement," which is afforded the protections of the Franchise Acts.

Sections 4.1-401 and 4.1-500, respectively, provide that:

> "*Agreement*" means a commercial relationship, not required to be evidenced in writing, of definite or indefinite duration, between a [winery/brewery] and [wine/beer] wholesaler pursuant to which the wholesaler has been authorized to distribute one or more of the [winery's/brewery's] brands of [wine/beer]. The doing or accomplishment of any of the

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[12] *See* §§ 4.1-406; 4.1-407; 4.1-505; 4.1-506 (1999).

[13] Sections 4.1-409(A) and 4.1-508(A), respectively, provide that:

"[I]n any case in which a [winery/brewery] is found to have attempted or accomplished an amendment, termination, cancellation, or refusal to continue or renew an agreement without good cause ... the [Virginia Alcoholic Beverage Control] Board shall, *upon the request of the wholesaler involved*, enter an order requiring that (i) the agreement remain in effect or be reinstated or (ii) the [winery/brewery] pay the wholesaler reasonable compensation[.]" [Emphasis added.]

[14] Section 4.1-417 provides that "[n]o winery or wholesaler shall restrict or inhibit the right of free association among wineries or wholesalers for any lawful purpose." Section 4.1-516 provides that "[n]o brewery or wholesaler shall restrict or inhibit the right of free association among breweries or wholesalers for any lawful purpose."

[15] *See* 2003 Op. Va. Att'y Gen., *supra* note 2, at 102.

> following acts shall constitute prima facie evidence of an agreement within the meaning of this definition:
>
> 1. The shipment, preparation for shipment or acceptance of any order by [a winery/any brewery] for any [wine/beer] to a [wine/beer] wholesaler within the Commonwealth.
>
> 2. The payment by a [wine/beer] wholesaler and the acceptance of payment by any [winery/brewery] for the shipment of an order of [wine/beer] intended for sale in the Commonwealth.

According to the facts provided, the filing of Attachments A and B and the distributor's purchase and shipment of wine or beer provide *prima facie* evidence of an "agreement" between a winery or brewery and the wholesaler that is subject to the Wine or Beer Franchise Act because it accomplishes the acts specified in § 4.1-401 and § 4.1-500. The filing creates a presumption and shifts the burden of proof to the winery, brewery, or importer ("authorized representative") because of the meaning of "*prima facie* evidence." *Prima facie* evidence is "[e]vidence that will establish a fact or sustain a judgment unless contradictory evidence is produced."[16] Thus, evidence of the actions described constitutes proof of an "agreement" subject to the Acts unless the winery, brewery, or authorized representative rebuts that evidence. By establishing facts that constitute prima facie evidence, it is clear that a "presumption of law"[17] is created. Furthermore, this comports with the burden of proof placed on wineries, breweries, or authorized representatives to show good cause for the termination or nonrenewal of agreements established by §§ 4.1-407(E) and 4.1-506(E).[18]

III. Applicability of the Wine and Beer Franchise Acts and Waivers.

Breweries or wineries may be bound by the Wine or Beer Franchise Act, whether their authorized representatives enter into written agreements of definite duration with their distributors, where the winery or brewery is bound by the actions of its authorized representative. The definitions of "agreement" in the Franchise Acts are not controlling for § 4.1-218, which governs limitations on importers or authorized representatives, because each definition expressly states that it applies "[a]s used in this chapter."[19] Thus, the application of the definition for "agreement" is limited to the respective Franchise Act. The definitions do not apply to § 4.1-218 since it is not a part of the Franchise Acts. Furthermore, the Court of Appeals of Virginia has decided this issue.[20] The Court reversed the Virginia Alcoholic Beverage Control Board's decision by applying principles of agency law to determine whether displaced wholesalers' agreements were with the importer or authorized representative individually, or whether the agreements were with the importer acting as an agent for the brand owner.[21] The Court found that the Beer Franchise Act did not apply to the brand owner after examining the agreement between the brand owner and the

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[16] *See* BLACK'S LAW DICTIONARY, *supra* note 8, at 598.

[17] "A legal assumption that a court is required to make if certain facts are established and no contradictory evidence is produced." *Id.* at 1224.

[18] "In any proceeding brought pursuant to this section in which the existence of good cause is an issue, the winery shall have the burden of proving the existence of good cause." Section 4.1-407(E) (1999). "In any proceeding brought pursuant to this section in which the existence of good cause is an issue, the brewery shall have the burden of proving the existence of good cause." Section 4.1-506(E) (1999).

[19] Sections 4.1-401; 4.1-500 (1999).

[20] *See* Va. Alcoholic Beverage Control Bd. v. Cerveceria Modelo, S.A. de C.V., Nos. 0575-90-4 & 0585-90-4 (Va. Ct. App. July 23, 1991).

[21] *Id.*

importer and the importer's dealings with the displaced wholesalers.[22] Thus, the principles of agency law govern this determination unless the General Assembly has modified the applicable provisions of the alcoholic beverage control laws subsequent to the Court's decision.

The rules of statutory construction require the presumption that the General Assembly, in enacting statutes, has full knowledge of existing law and the construction placed upon it by the courts and that it intended to change the existing law.[23] Despite the holding in *Modelo*, the General Assembly thereafter did not elect to create an agency as a matter of law between the brand owner and the importer. Rather than amending the Alcoholic Beverage Control Act to establish an agency by operation of law, the General Assembly subsequently has revised the limitations on wine and beer importers to require those who are not the brand owners of the brand to be imported to provide written authorization from brand owners to

> establish written agreements of a definite duration and within the meaning of the Wine Franchise Act (§ 4.1-400 et seq.) and the Beer Franchise Act (§ 4.1-500 et seq.), on behalf of the brand owner, as its authorized representative, with each wholesale licensee to whom the importer sells any brand of beer or wine owned by the brand owner.[24]

Based on the analysis in the *Modelo* decision and the subsequent amendment to the Alcoholic Beverage Control Act that resulted in the current form of § 4.1-218,[25] which does not change the *Modelo* analysis in the absence of "written agreements of a definite duration,"[26] when a brand owner changes importers, the new importer is bound by the wholesaler designations made by the previous importer when such appointments are the subject of written agreements of a definite duration. This conclusion follows because § 4.1-218 requires that the importer provide evidence of the brand owner's authorization for the importer to enter into such agreements on its behalf prior to the sale of any brands to any wholesaler.

Where the agreement with the importer is not written and of definite duration, but is an agreement "within the meaning of" the Wine and Beer Franchise Acts, the brand owner and new importer may be bound by the wholesaler designations made by the previous importer. This would be the case where an examination of the facts concerning the relationships between the brand owner, the importer, and the wholesaler, applying the *Modelo* analysis, results in a finding of actual agency or apparent authority. Because the filing of Attachments A and B in compliance with § 4.1-218 does not provide the evidence necessary to make such a determination, the only way the Board may determine the rights and responsibilities of the parties to a dispute would be through a proceeding initiated pursuant to §§ 4.1-407 and 4.1-410 or §§ 4.1-506 and 4.1-509.

As previously noted, § 2.2-505 does not contemplate that opinions be rendered on matters requiring factual determinations.[27] I must, therefore, respectfully decline to render an opinion regarding whether such a relationship exists in a particular circumstance. Additionally, in rendering official opinions pursuant to § 2.2-505, Attorneys General have declined to render opinions when the request

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[22] *Id.*

[23] *See* Wisniewski v. Johnson, 223 Va. 141, 144, 286 S.E.2d 223, 224-25 (1982); City of Richmond v. Sutherland, 114 Va. 688, 693, 77 S.E. 470, 472 (1913); Op. Va. Att'y Gen.: 2003 at 52, 54; *id.* at 6, 10 n.11; 1995 at 130, 131.

[24] Section 4.1-218.

[25] *See* 1991 Va. Acts ch. 628, at 1148, 1152-53 (amending § 4-25, predecessor to § 4.1-218, and adding subsection D). Section 4.1-218 contains substantially the same language as § 4-25(D) in 1991. *Compare* § 4.1-218 *with* 1991 Va. Acts, *supra* (adding § 4-25(D)).

[26] Section 4.1-218.

[27] *See supra* note 15 and accompanying text.

requires the interpretation of a matter reserved to another entity.[28] The application of the Wine or Beer Franchise Act must be conducted on a case-by-case basis with the Alcoholic Beverage Control Board or the appropriate trier of fact making the determination.

It is clear, however, that an authorized representative cannot avoid the application of the Wine and Beer Franchise Acts by requiring a waiver from the distributor. Sections 4.1-416(A) and 4.1-515(A), respectively, prohibit such waivers providing that "[n]o [winery/brewery] shall require any wholesaler to waive compliance with any provision of this chapter. Any contract or agreement purporting to do so is void and unenforceable to the extent of the waiver or variance." Given the plain language of these provisions and §§ 4.1-406 and 4.1-505, a winery or a brewery cannot cause a wholesaler to waive the right to the notice required by §§ 4.1-407 and 4.1-506 for any amendment, termination, cancellation, or renewal of an agreement. Further, a winery or brewery cannot cause a wholesaler to waive the right to a good cause showing as defined by §§ 4.1-406 and 4.1-505. Accordingly, I conclude that a winery or brewery cannot, by contract, require a wholesaler to waive the winery's or brewery's obligation to comply with provisions of the Wine or Beer Franchise Act.

IV. Written Agreements of Definite Duration.

The execution and filing of Attachments A and B and the exchange of orders and invoices between authorized representatives and distributors do not constitute a "written agreement[] of definite duration" pursuant to § 4.1-218. Under the rules of statutory construction, "'every part of a statute is presumed to have some effect and no part will be considered meaningless unless absolutely necessary.'"[29] This means that "written agreements of a definite duration" "within the meaning of the Wine Franchise Act and the Beer Franchise Act" must have separate, distinct meanings, and purpose.[30] As previously explained, the exchange of orders and invoices between authorized representatives and distributors are actions that constitute *prima facie* evidence of an "agreement" pursuant to the Wine and Beer Franchise Acts. These "agreements" are commercial relationships that do not have to be evidenced in writing, nor must they be of definite duration. Should the actions that constitute evidence of these unwritten "agreements" also constitute a "written agreement[] of definite duration,"[31] there would be no need for the General Assembly to make the distinction. To avoid rendering either phrase meaningless or mere surplusage,[32] the General Assembly must intend that the phrases have distinct meanings and refer to different types of agreements. Construing such exchange of orders and invoices as evidence of the unwritten, indeterminate "agreements" pursuant to the Acts accomplishes this goal.

Conclusion

Accordingly, is my opinion that the Wine Franchise Act or the Beer Franchise Act compels a winery or brewery to honor distributor appointments made by a prior authorized representative unless the winery or brewery provides a notice of intent to terminate the agreement with the distributor and good cause exists for the nonrenewal or noncontinuation of such agreement. Whether the requisite notice has been provided and good cause exists are factual determinations for the Virginia Alcoholic Beverage

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[28] *See* Op. Va. Att'y Gen.: 2003, *supra* note 2, at 102; 1987-1988 at 69, 72, and opinions cited therein.

[29] *Sansom*, 257 Va. at 595, 514 S.E.2d at 349 (quoting *Hubbard*, 255 Va. at 340, 497 S.E.2d at 338), *see also* Op. Va. Att'y Gen.: 2003 at 158, 160; 2000 at 117, 118.

[30] Section 4.1-218.

[31] *Id.*

[32] Such a reading would be inconsistent with the rules of statutory construction requiring that a statute be read as a whole and that every provision be given effect if possible. *See* Gallagher v. Commonwealth, 205 Va. 666, 669, 139 S.E.2d 37, 39 (1964); Posey v. Commonwealth, 123 Va. 551, 553, 96 S.E. 771, 771 (1918).

Control Board. It is further my opinion that an authorized representative cannot avoid application of either Act by requiring a waiver from the distributor because §§ 4.1-416 and 4.1-515 of the Franchise Acts prohibit such waivers. Additionally, it is my opinion that the execution and filing of Attachments A and B and the exchange of purchase orders and invoices between authorized representatives and distributors do not constitute a "written agreement[] of definite duration" pursuant to § 4.1-218.

For many years, Attorneys General of Virginia have concluded that § 2.2-505, which authorizes official opinions of the Attorney General, does not contemplate that such opinions be rendered on matters requiring factual determinations, rather than matters interpreting questions of law.[33] It is my opinion that the other matters about which you inquire require either a factual determination or are matters reserved to another entity. Therefore, I must respectfully decline to render an opinion regarding whether a specific contract provision or a contemplated termination violates either the Wine or Beer Franchise Act or whether a winery or brewery that fails to offer appointed distributors written agreements of definite duration falls outside the purview of the respective Act.

Thank you for letting me be of service to you.

Sincerely,

Robert F. McDonnell

6:873; 1:941/05-075

[33] *See supra* note 2.