

N.D.A.G. Letter to Hanson (Dec. 14, 1989)

December 14, 1989

Honorable Robert E. Hanson
State Treasurer
State Capitol
600 East Boulevard Avenue
Bismarck, ND 58505

Dear Mr. Hanson:

Thank you for your August 31, 1989, letter concerning the application of N.D.C.C. § 5-01-11.

You inquire into the legality of the purchase of the Holiday Inn hotel chain by Bass PLC, a corporate entity that manufactures liquor. Your question arises because N.D.C.C. § 5-01-11 prohibits any manufacturer of alcoholic beverages from having a financial interest in a retail alcoholic beverage establishment.

The purpose of "tied house" statutes such as N.D.C.C. § 5-01-11 is to prevent the control of retail alcoholic beverage dealers by alcoholic beverage manufacturers and wholesalers. See Pickerill v. Schott, 55 So.2d 716, 718 (Fla. 1951), cert. denied, 344 U.S. 815 (1952); Weisberg v. Taylor, 409 Ill. 384, _____, 100 N.E.2d 748, 748 (1952). Bass PLC is a brewer (i.e., manufacturer) and the Holiday Inns in this state are retail liquor license holders.

After reviewing your letter and N.D.C.C. § 5-01-11, a member of my staff contacted Jack Fider, the general manager of the Bismarck Holiday Inn. Mr. Fider stated that Bass PLC will not have a direct financial interest in the majority of Holiday Inns. Rather, Bass PLC is a franchiser and will function as a management company responsible for reviewing the activities of the franchisees. Most Holiday Inns are independently owned and operated; the Bismarck Holiday Inn, for example, is owned by Larken, Inc., of Cedar Rapids, Iowa. If Bass PLC lacks a financial interest in a particular Holiday Inn, then it would not be in violation of N.D.C.C. § 5-01-11. Based on my understanding of the facts Bass PLC's acquisition of the Holiday Inn hotel chain does not violate N.D.C.C. § 5-01-11.

I trust this letter satisfies your inquiry; however, please write if you have additional questions.

Sincerely,

Nicholas J. Spaeth

vkk