

Alcoholic beverages, auxiliary deputy sheriffs

Number: INFORMAL

Date: January 13, 1997

The Honorable Kevin Beary
Orange County Sheriff
Post Office Box 1440
Orlando, Florida 32802-1440

Dear Sheriff Beary:

You ask whether the provisions of section 561.25, Florida Statutes, apply to auxiliary deputies who own an interest in a fast food restaurant that serves beer and wine under an alcoholic beverage license issued by the Department of Business and Professional Regulation. According to your letter, only a small percentage of his business consists of sales of beer and wine.

Section 561.25, Florida Statutes, prohibits a county or municipal officer "with state police power" from engaging in the sale of alcoholic beverages under the state beverages laws or from owning any stock or interest in a firm involved in the sale of alcoholic beverages. The statute excepts ownership of shares of stock, bonds, or other securities regulated by the Securities and Exchange commission and regularly traded on United States major stock exchanges.

This office has previously stated that the purpose of this prohibition is to prohibit law enforcement officers from being connected with licensed premises in such a way as to interfere with or prevent the officer involved from enforcing the beverage law in an unbiased and unprejudiced manner.[1] An auxiliary law enforcement, however, unlike a full-time or part-time officer, is accorded authority only while under the direct supervision of either a full-time or part-time law enforcement officer.[2] Thus, unlike a full-time or part-time officer who is on duty 24 hours a day, an auxiliary law enforcement officer may perform law enforcement function only "under the direct supervision" or "in the company and under the direct of" full-time or part-time officers.[3]

The Legislature's intent in enacting the statute was to prevent the biased and prejudiced enforcement of the alcoholic beverage laws. This purpose would not appear to be threatened by an unpaid auxiliary deputy's ownership of a fast food restaurant that incidentally serves beer and wine as part of its food service operation when the auxiliary officer has no independent authority to enforce the laws of this state.

Therefore, I am of the view that the provisions of section 561.25, Florida Statutes, would not prevent your unpaid auxiliary deputy from owning an interest in a fast food restaurant which offers beer and wine as a secondary service to its customers.

You also ask about an auxiliary deputy who acts as a subcontractor for a local comedy club to hire and promote entertainment for the club but who has no ownership interest in the club. The club has an alcoholic beverage license and you are concerned that the provisions of section

561.25, Florida Statutes, may be applicable. Under the rationale expressed above, such employment would not appear to contravene the intent of section 561.25, Florida Statutes.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/hpa

[1] Op. Att'y Gen. Fla. 58-16 (1958).

[2] See *Stanford v. State*, 415 So. 2d 879 (Fla. 1st DCA 1982).

[3] See, e.g., ss. 943.10(6) and (8), Fla. Stat.