



TEXAS ALCOHOLIC BEVERAGE COMMISSION

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Dick Durbin, Administrator

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May 28, 1993

Opinion Commission

The Honorable Dan Morales
Attorney General of Texas
Price Daniel, Sr. Building
Austin, Texas 78701

FILE # _____

I.D.# 20553

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Opinion Commission

RO-555

Dear General Morales:

I am writing to request an opinion interpreting Section 5.05(a) of the Texas Alcoholic Beverage Code.

That section of the Code reads as follows:

"Sec. 5.05. RELATIONSHIP WITH ALCOHOLIC BEVERAGE BUSINESS PROHIBITED. (a) No person may be appointed to or serve on the commission, or hold an office under the commission, or be employed by the commission, who:

- (1) has any financial connection with a person engaged in an alcoholic beverage business;
- (2) holds stocks or bonds in an alcoholic beverage business; or
- (3) has a pecuniary interest in an alcoholic beverage business."

I have placed a sum of money with an investment advisory firm which, through an unrelated broker, makes investments on my behalf. Stocks are purchased in street name for my benefit. I exercise no control in the ordinary course over which stocks the investment firm instructs the broker to buy or sell. The firm manages a multi-billion dollar diversified portfolio for thousands of clients. The same stocks are purchased for each client. My holdings are an infinitesimal percentage of the total portfolio. The firm does not consult with me about what stocks to buy or sell (and I do not presume to opine). I know about my portfolio changes only when I receive an after-the-fact statement regarding my holdings and their value.

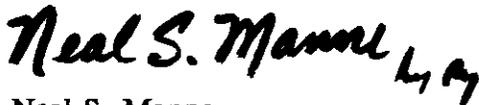
My understanding is that §5.05 has been interpreted not to apply to an investment in a mutual fund over which an investor cannot influence the decision to purchase or sell a particular stock or group of stocks. My question is whether §5.05 applies to my investments through the major firm I have described above.

The problem is complicated by the fact that hundreds of major corporate conglomerates have, at least arguably, some indirect connection to "the alcoholic beverage business." Pilsbury, for example, owns Steak 'N' Ale restaurants, which serve not only steak but beer. The alcohol sales constitute a minute fraction of Pilsbury's revenues. Pepsi owns Pizza Hut, which serves beer. All commercial airlines hold alcoholic beverage permits. There are hundreds of similar examples. Indeed, I doubt there is any easy and reliable way for me to even determine whether a company has an indirect connection to the alcoholic beverage business.

My own sense is that §5.05 should not apply to investments over which a Commissioner exercises no control in the ordinary course; and should not apply to companies who derive a minute fraction of their revenues from alcoholic beverages. However, I am aware of no case law or prior opinions on this matter with respect to the Alcoholic Beverage Commission or its predecessor, the Texas Liquor Control Board. Your review of this issue and your opinion therefore would be greatly appreciated, as I am anxious to ensure that my investments comply with all applicable statutes or rules.

If I can provide more detailed information or need to answer any questions, please contact me at (713) 653-7827.

Sincerely,

Neal S. Manne 

Neal S. Manne

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