

Assignment 6: Administrative Law

Congratulations! You have passed the North Carolina bar and just started practicing with a firm in Raleigh. A local winemaker has contacted your firm for legal assistance. No one in the firm knows anything about this subject but would like to expand into this area since the wine industry is rapidly growing in North Carolina. You have been chosen to become their expert.

The client owns two vineyards in North Carolina; the vineyard located in Orange County is planted with Merlot grapes and the other vineyard, which is planted in Chardonnay, is located five miles further north in Person county. Your client harvested the first crop in both vineyards last fall and will be bottling the wines next year. She is in the process of creating labels for the bottles and knows that the law dictates what can appear on a wine label. She seeks your assistance in working out the details.

She also knows that the government has already created or is talking about creating a viticultural area, also known as an AVA, called "Haw River Valley." She wants to be able to put "Haw River Valley" on the labels of both wines, since everyone thinks highly of and is willing to pay extra for wines produced from grapes grown in this area. Can she have the printer put "Haw River Valley" on both the Chardonnay and Merlot labels? If not, what action could you take to help make it possible for her to put "Haw River Valley" on both labels?

1. Let's begin with the question about the label generally. This area of law is a good candidate for administrative regulations. Devise a strategy for locating relevant regulations on Lexis or Westlaw. Describe and explain your strategy below and indicate the relevant title and sections of the C.F.R.

Search the CFR on Lexis or Westlaw using the following or similar search: pr,ca(wine & label)

This search retrieves seven sections in the CFR, all of which are in Title 27 of the CFR. A look at the table of contents shows that Part 4 of Title 27 is relevant. Subpart D (§§ 4.30 - 4.39) specifies labeling requirements generally and Subpart F (§§ 4.50 - 4.52) deal with the approval of the label by the TTB.

2. When working with regulations, always note how current they are. How current are the relevant regulations?

On Friday, March 26th, the CFR on Westlaw was current through March 19, 2009 while Lexis was current through March 18th.

3. Have any amendments to the regulations been issued since the latest update to the C.F.R. database on Lexis/Westlaw? How did you make this determination?

On Westlaw, a red flag would signal an actual change since March 27th. On Lexis, you would click on the link labeled Retrieve Regulatory Impact.

4. How would you determine if the agency that issued the relevant regulations has proposed or is thinking of proposing any changes to the existing rules?

On Westlaw, a yellow flag would mark any proposed regulations that would change the regulation you are viewing. On Lexis, Retrieve Regulatory Impact option would indicate any proposed rule changes.

5. Which section of the C.F.R. discusses mandatory label information?

§ 4.32

6. What final step, beyond reading the text of the regulation itself, must you take to determine the meaning of this regulation?

Check for any citing sources, such as cases, that interpreted and/or applied the section. In this instance, four cases have at least cited § 4.32.

7. If you were asked by the firm not to incur Lexis/Westlaw charges for this client, what option(s) would you have for conducting the research required to answer Questions 1 through 3 above?

The text of the Code of Federal Regulations could be found by using www.gpoaccess.gov or by using the e-cfr, also available through GPO access. Updating would require use of the List of Sections Affected (LSA) pamphlets and the latest LSA tables in the latest issue of the Federal Register.

Locating citing cases and other citing materials would be much more difficult and time consuming without the use of Lexis/Westlaw or another online subscription product. In this case, use of Lexis and Westlaw would be the most efficient option.

8. If you are going to represent this client, you may want to find and read as much information about this issue as you can. Of the various sources we talked about in class regarding administrative law, what additional steps might you take to fully educate yourself in this area of law and become a knowledgeable advocate for your client? Please be specific; list all sources you located and specify how you located them.

27 C.F.R. § 9.214 defines the Haw River Valley AVA. As we discussed in class, using the web page of an agency can provide much additional information. In this case, the agency has a web site at www.ttb.gov. On the agency's web site you will find links to not only the regulations you already located but references to other publications issued by the agency related to wine labels. For example, if you visit <http://www.ttb.gov/wine/wine-labeling.shtml> you will see a page on wine labeling with a lot of information about what must be on the label, defined AVA's, and other useful information

Beside the federal authority, the state of North Carolina has a web page at <http://www.nccommerce.com/en/TourismServices/NurtureWineAndGrapeIndustry/StartingAWinery/> that discusses the requirements of starting a winery. This mentions the TTB regulations as well as local regulations that apply to wineries.

In addition to government web sites, you should also locate web sites of interested organizations. For example, the Wine Institute has a web page at www.wineinstitute.org. They post helpful information as well. Another web page is found at <http://www.winepros.org/consumerism/labels.htm>. Always remember to consult the authoritative sources before relying on a third-party site.

9. Turn your attention now to the issue of whether your client can include the phrase “Haw River Valley” on the labels. Can this phrase be included on the labels for both wines? Please describe in detail the information you used to formulate your answer, how you located this information, and what you might do to help your client realize her goal of putting it on both labels.

A regulation was proposed to create the Haw River Valley Viticultural Area; it was published at 73 F.R. 16800 (proposed March 31, 2008). This regulation is now final and was published in the March 30, 2009 F.R. The area included in the AVA does not include Person county. However, as an advocate for you client, you have now missed the proposed stage for submitting comments. You may want to propose to the TTB a modification of the AVA to include Person county. This would require that you familiarize yourself with the criteria used by the TTB for approval of AVA’s. Part of this is discussed in the background information provided in the proposed regulation. You could also look at other AVA proposals in the FR as well as interested non-governmental organizations for further information on what the TTB looks for when determining an AVA.

10. The wine maker is interested in petitioning the government to expand the Haw River Valley AVA. She wants you to look into what kind of information she would need to present to support her case. What type of information, generally speaking, would she need to present to the government to support her cause? Some of the administrative law sources we have talked about will provide you with guidance on this question.

The TTB has a page on the process for expanding or adding a new AVA at <http://www.ttb.gov/wine/wine-faq.shtml#w2> . You could also check out [reginfo.gov](http://www.reginfo.gov) to see if the TTB is currently considering any changes to this particular AVA.

11. You have been asked a question regarding California wine law. An attorney believes there is a California state statute that places greater restrictions on wine labels than the federal government. He thinks the law is related to the name of the region where the grapes are grown that can be put on the label. Are these state laws preempted by the federal laws you have looked at for this assignment? Please indicate the steps you would follow to answer this question and indicate what the answer is.

Title 17 of the California Administrative Code § 17015 requires that if California is used as the appellation name, then one hundred percent of the grapes must have been grown in California. The federal regs, on the other hand, require that only 75 percent need be from the named state (see 27 C.F.R. § 4.25). This is just a reminder to always check state statutory and regulatory schemes; they may impose stricter standards than the federal system, assuming the state regs are not preempted by the feds.