

Tenn. Op. Atty. Gen. No. 99-098 (Tenn.A.G.), 1999 WL 321788

Office of the Attorney General

State of Tennessee
Opinion No. 99-098
April 30, 1999

Applicability of Local Beer Permit Ordinance to Holders of Liquor-by-the-Drink Licenses

*1 The Honorable Doug Jackson
State Representative
32 Legislative Plaza
Nashville, Tennessee 37243-0169

QUESTION

Is the holder of a license to sell liquor-by-the-drink exempted from the provisions of a local beer ordinance that set a minimum distance between establishments that sell beer and schools, churches, parks, and similar locations?

OPINION

No. State liquor-by-the-drink licensees, if they wish to sell beer, are not exempt from the minimum distance requirements of local beer ordinances.

ANALYSIS

[Tenn. Code Ann. § 57-4-101\(a\)](#) states in part:

(a) It is lawful to sell wine and other alcoholic beverages as defined in this chapter to be consumed on the premises of any hotel, commercial passenger boat company, restaurant, or commercial airlines and passenger trains meeting the requirements hereinafter set out, within the boundaries of the political subdivisions, wherein such is authorized under § 57-4-103. Beer, as defined in § 57-6-102, is also authorized to be sold on such premises.

The instant question is whether the mentioning of beer in this statute relieves holders of liquor licenses from the requirements of a local beer ordinance. While such an implication might be drawn from an isolated reading of [§ 57-4-101\(a\)](#), the general framework of Tennessee's laws governing liquor and beer sales militates against such a construction of this statute, and court decisions have now made entirely clear that the relevant statutes must be read to maintain local control over issuance of beer permits, even for establishments licensed to sell liquor by the drink.

Although beer is mentioned in [Tenn. Code Ann. § 57-4-101\(a\)](#), “beer” is not included in the list of definitions contained in § 57-4-102. Beer is not mentioned in the licensure provisions of [Tenn. Code Ann. § 57-4-201](#); only “wine” and “alcoholic beverages” are referenced. “Alcoholic beverage” or “beverage” is defined, for purposes of chapter 4 of Title 57 of the Tennessee Code as

alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine and capable of being consumed by a human being, *other than patented medicine or beer where the latter contains an alcoholic content of five percent (5%) by weight or less*. Notwithstanding any provision to the contrary in this title, “alcoholic beverage” or “beverage” also includes any liquid product containing distilled alcohol irrespective of alcoholic content.

[Tenn. Code Ann. § 57-4-102\(1\)](#)(emphasis added).

Pursuant to the provisions of [Tenn. Code Ann. § 57-4-201](#), the Alcoholic Beverage Commission administers the provisions of parts 1-3 of chapter 4, Title 57 of the Tennessee Code. The license or permit issued by the Commission is for the sale of alcoholic beverages or wine, not beer. Because of the separate nature of the two schemes for licensing sales of liquor and beer, it appears that the reference to “beer” in [Tenn. Code Ann. § 57-4-101\(a\)](#) is designed to make clear that those establishments selling wine or alcoholic beverages are not prevented from selling beer also. But the provisions of this statute are not an absolute grant of the right to sell beer in defiance of local requirements. The “requirements hereinafter set out” must be met. A license or permit from the Alcoholic Beverage Commission must be obtained to sell alcoholic beverages or wine. That license or permit, however, does not cover beer sales. An appropriate beer permit must also be obtained to sell beer. The regulation of beer sales is discussed in part 5 of Title 57 of the Tennessee Code, and is subject to local requirements that may include minimum distances from places of public gathering. See [Tenn. Code Ann. § 57-5-105](#). The Court of Appeals recently reiterated this principle that, historically, the State has regulated sales of alcoholic beverages other than beer, whereas local governments have regulated sales of beer. In *Underground II, Inc. v. City of Knoxville*, 1998 WL 46447 (Tenn. App., Feb. 4, 1998), the Court observed,

*2 No authority has been expressly delegated to municipalities to regulate, license or otherwise control the operation of businesses relating to alcoholic beverages as opposed to beer. Without question, authority over beer and other beverages not falling within the definition of “alcoholic beverage” may be controlled and regulated by local governmental agencies.

In addition to these more general observations, the Tennessee Supreme Court has directly held that the holder of a liquor-by-the-drink license is not automatically entitled to sell beer, despite the language of [§ 57-4-101\(a\)](#). In *State ex rel. Amvets Post 27 v. Beer Board of the City of Jellico*, 717 S.W.2d 878 (Tenn. 1986), the holder of a liquor-by-the-drink permit argued that it was entitled to have a local beer permit issue automatically, even though the local beer board had denied the permit request based on its own rules. The Court noted that the provisions of the Code addressing the issuance of beer permits do not make an exception for the holders of liquor-by-the-drink licenses issued by the State. *Id.* at 880. The Court also emphasized that control over the sale or consumption of beer has been generally vested in local governments, whereas the Tennessee Alcoholic Beverage Commission has been given the primary, although not exclusive, responsibility for regulating the sale of alcoholic beverages other than beer. Although the Court conceded that the alcoholic beverage statutes and beer permit statutes are complex, it held that the statutes “*do not go as far as urged by appellant and free the holders of state licenses from the conditions and requirements of local governments respecting the sale of beer.*” *Id.* at 881 (emphasis added).¹

The holder of a liquor-by-the-drink license must also possess a local beer permit in order to sell beer. The holder of a liquor-by-the-drink license is not exempted from minimum distance requirements of the local beer ordinances.

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Footnotes

¹ The Code describes some situations in which the provisions of the liquor-by-the-drink statutes may preempt requirements of a local beer ordinance. [Tenn. Code Ann. § 57-4-203\(d\)](#) sets the hours for sales of “alcoholic beverages, and/or malt beverages,

and/or wine.” Pursuant to [Tenn. Code Ann. § 57-5-301\(b\)\(4\)](#) in an incorporated municipality that has authorized sales of liquor-by-the-drink, “the hours for the sale of beer as defined in § 57-6-102(1) ... shall be the same as the hours authorized by the rules and regulations promulgated by the alcoholic beverage commission for establishments selling liquor by the drink.” Thus, in some situations, a holder of a liquor-by-the-drink license may be able to sell beer during time periods that are not consistent with the time periods specified by the local beer ordinance. This statutory provision, however, does not exempt the holder of a liquor-by-the-drink license from the requirement to obtain a beer permit and comply with the regulations of the local beer ordinance, if he is going to sell beer also. *See* Op. Tenn. Atty. Gen. 83-402 (Dec. 6, 1983)(addressing a private club possessing both a liquor-by-the-drink license and a beer permit and located within the boundaries of a county and municipality that had not adopted liquor-by-the-drink.)

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