S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

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Opinion No. 00-020

Constitutionality of Tenn. Code Ann. § 39-17-1305.

QUESTIONS

1. Is Tenn. Code Ann. § 39-17-1305, which prohibits the possession of firearms where alcoholic beverages are served or sold, constitutional?

2. Should the statute's purview be limited to places where alcohol is the sole or primary product?

OPINIONS

1. Yes, Tenn. Code Ann. § 39-17-1305 is constitutional.

2. No, limiting the statute's purview to places where alcohol is the sole or primary product would likely create vagueness and thus open the statute to constitutional attack.

ANALYSIS

1. A fundamental component of both the Due Process Clause of the United States Constitution and the law of the land clause of the Tennessee Constitution is that a law is void for vagueness if its prohibitions are not clearly defined. *Grayned v. City of Rockford*, 408 U.S. 104, 108, 92 S.Ct. 2294 (1972); *State v. Wilkins*, 655 S.W.2d 914, 915 (Tenn. 1983). The Supreme Court has explained that vague laws offend several important values:

> First, because we assume that a man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them.

Grayned, 408 U.S. at 108, 92 S.Ct. at 2294. The more important of these two factors is the presence of minimal guidelines to direct law enforcement. *Kolender v. Lawson*, 461 U.S. 352, 358, 103 S.Ct. 1855, 1858 (1983). Nevertheless, the Supreme Court has warned:

> The root of the vagueness doctrine is a rough idea of fairness. It is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited.

Colton v. Kentucky, 407 U.S. 104, 111, 93 S.Ct. 1953, 1957 (1972); *State v. Strickland*, S.W.2d 912, 921 (Tenn. 1975).

Tenn. Code Ann. § 39-17-1305 makes it "an offense to possess a firearm on the premises of a place open to the public where alcoholic beverages are served or in the confines of a building where alcoholic beverages are sold."[1] Further, the Sentencing Commission's comment on the statute provides that this section "prohibits possession of weapons in areas adjacent to where alcoholic beverages are served, such as parking lots." Tenn. Code Ann. § 39-17-1305 Sentencing Commission Cmts. (1997). The phrases "premises of a place" and "confines of a building" are not vague. The terms, "sold" and "served," are also self-explanatory. The premises of a place open to the public, including its parking lot, where alcohol is served, or in the confines of a building where alcoholic beverages are sold are off limits to those carrying firearms.

An ordinary citizen could understand that the above conduct constitutes an illegal offense. Anyone not conducting themselves accordingly, outside of the few exceptions enumerated in the statute, would be subject to the penalties prescribed in the statute.

Furthermore, if a law enforcement officer came upon one possessing a firearm at any premises open to the public, including a parking lot, where alcohol is served, or in the confines of a building where alcoholic beverages are sold, the statute would enable such officer to make an arrest. No discretion or arbitrary enforcement is involved in interpreting and administering the statute; all persons violating the statute would be treated the same. In addition, all establishments serving or selling alcohol would be treated the same. It is the opinion of this office that the statute is not void for vagueness and is, thus, constitutional.

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[1]Tenn. Code Ann. § 39-17-1305 (1997) is entitled "Possession of firearm where alcoholic beverages are served or sold" and provides as follows:

> (a) It is an offense for a person to possess a firearm on the premises of a place open to the public where alcoholic beverages are served or in the confines of a building where alcoholic beverages are sold.
> (b) A violation of this section is a Class A misdemeanor.
> (c) The provisions of subsection (a) shall not apply to a person who is:
> (1) In the actual discharge of official duties as a law enforcement officer, or is employed in the army, air force, navy, coast guard, or marine service of the United States or any member of the Tennessee national guard in the line of duty and pursuant to military regulations, or is in the actual discharge of duties as a correctional officer employed by a penal institution; or
> (2) On the person's own premises or premises under the person's control or who is the employee or agent of the owner of the premises with responsibility for protecting persons or property.

This office has already opined that the statute does not offend Article I, Section 26 of the Tennessee Constitution, which provides for the right to keep and bear arms. *See* 1996 Atty. Gen. Op. 96-080 (copy attached).

2. It is the opinion of this office that there is no basis for limiting the statute's purview to places where alcohol is the sole or primary product sold. The primary rule of statutory interpretation is to give effect to the plain language of the statute. *See Metropolitan Government of Nashville & Davidson County v. Motel Systems, Inc.*, 525 S.W.2d 840 (Tenn. 1975). Here, the statute is not unclear or contradictory, and its plain language permits no such limitation. Further, such a limitation could create vagueness and open the statute to constitutional challenge.

Applying the statute to establishments in which alcohol is the predominate product creates vagueness and ambiguity. How would one know whether alcohol is the establishment's sole or primary product so that he or she may temper his or her conduct accordingly? Ordinary people would be unable to understand where certain conduct is prohibited. *See Kolender*, 461 U.S. at 358, 103 S.Ct. at 1858.

In addition, law enforcement would face the same problem. It would be difficult for an officer to distinguish between legal and illegal conduct. This would, in turn, encourage arbitrary and discriminatory enforcement. It is the opinion of this office that the statute survives constitutional muster as it is written, and that the limitation proposed in question 2 might render the statute vulnerable to attack on vagueness grounds.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

TARA B. HINKLE
Assistant Attorney General

Requested by:

Honorable Roy Herron
State Senator
P.O. Box 5
Dresden, TN 38225