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. 01-048

Effect of Home Rule Charter on Liquor Referendum in Lenoir City

QUESTION

Lenoir City, which is a home rule municipality, has a charter provision that prohibits the sale of liquor within the city limits. Assume that a group of local citizens has filed a petition pursuant to Tenn. Code Ann. § 57-4-103 requesting an election on the question of liquor by the drink, and the Loudon County Election Commission has certified that this petition contains the requisite number of valid signatures. Does the charter provision and/or the fact that Lenoir City is a home rule municipality prohibit the election commission from calling and conducting a liquor-by-the-drink referendum?

OPINION

No.

ANALYSIS

This question concerns Lenoir City, which became a home rule municipality in 1954, according to the Municipal Technical Advisory Service. The City's charter is 1933 Tenn. Priv. Acts Ch. 127, as amended. You have asked about the effect of a provision of this charter on the conduct of a referendum under Tenn. Code Ann. § 57-4-103. Subsection (a)(1) of the statute provides that "[t]he provisions of this chapter shall be effective in any jurisdiction which authorizes such sales in a referendum in the manner prescribed by § 57-3-106." Tenn. Code Ann. § 57-3-106(a) provides that the voters of any county may, by local option election, "permit the manufacture, receipt, sale, storage, transportation, distribution and possession of alcoholic beverages, within the territorial limits of such county, by a majority vote, at an election held as hereinafter provided, ..."[1] Tenn. Code Ann. § 57-4-103 (a)(3) provides:

[1]Subsection (g) of this statute excepts out those counties wherein are located municipalities which have a population equal to or greater than the smallest county in Tennessee, or any municipality having a population of 1,700 or more persons, in which at least 50% of the assessed valuation of the real estate in the municipality consists of hotels, motels and tourist courts and accommodations. In such counties, the referendum election only applies to those portions of the county lying outside the corporate limits of such municipalities and the issue of whether the manufacture, receipt, sale, storage, distribution, transportation and/or possession of alcoholic beverages shall be permitted or prohibited shall be determined solely by separate local option elections held in each municipality.

> If any county has authorized the sale of alcoholic beverages for sale for consumption off premises pursuant to § 57-3-106, then ***any*** municipality wholly or partially within the boundaries of the county may conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of the municipality.

(Emphasis added). This statute was originally passed in 1967 and was last amended in 1998.

Section 24 of the Lenoir City Charter provides:

> That it shall be, and hereby is declared to be unlawful for any person or persons, company, firm, partnership, or corporation to sell, or offer for sale, give away, bargain, take orders for, or tipple, any intoxicating liquors, including wine, ale, beer, or vinour, spiritous malt or mixed liquors, or any adulterations or mixtures thereof, within the corporate limits of Lenoir City. The City Council of said Lenoir City is hereby clothed with full power and authority to pass and enact any and all ordinances necessary to effectuate the prohibitory provisions of this section of this Act.

This provision was part of the original city charter enacted in 1933 Tenn. Priv. Acts Ch. 127.

Statutes should be construed, if practicable, so that component parts are consistent and reasonable; inconsistent phrases should be harmonized, where possible, so as to reach legislative intent. *State v. Odom,* 928 S.W.2d 18, 29 (Tenn. 1996). But where two acts conflict and cannot be reconciled, the act passed earlier will be repealed by implication to the extent the two are inconsistent. *Cronin v. Howe,* 906 S.W.2d 910 (Tenn. 1995). We think it is clear that Tenn. Code Ann. § 57-4-103 was intended to authorize the citizens of any city that falls within its provisions to hold a liquor-by-the-drink referendum. This statute can be viewed either as an amendment to the Lenoir City Charter, or, to the extent it is inconsistent with the charter, as a repeal of the charter. The charter provision, therefore, does not prevent the election commission from conducting a liquor-by-the-drink referendum.

You have also asked whether the fact that Lenoir City is a home rule municipality would prevent the election commission from calling and conducting a liquor-by-the-drink referendum pursuant to Tenn. Code Ann. § 57-4-103. Article XI, Section 9 of the Tennessee Constitution, sometimes referred to as the "home rule" provision, states in relevant part:

> [A]ny act of the General Assembly private or local in form or effect applicable to a particular county or municipality either in its governmental or its proprietary capacity shall be void and of no effect unless the act by its terms either requires the approval by a two-thirds vote of the local legislative body of the municipality or county, or requires approval in an election by a majority of those voting in said election in the municipality or county affected.

> Any municipality may by ordinance submit to its qualified voters in a general or special election the question: "Shall this municipality adopt home rule?"
>
> In the event of an affirmative vote by a majority of the qualified voters voting thereon, and until the repeal thereof by the same procedure, such municipality shall be a home rule municipality, and the General Assembly shall act with respect to such home rule municipality only by laws which are general in terms and effect.

Tennessee courts have concluded that neither the local approval requirement nor the home rule limitations imposed by Article XI, Section 9 of the Tennessee Constitution apply to legislation where the subject matter is general and statewide in nature, a subject over which the Legislature has plenary power. *State ex rel. Cheek v. Rollings*, 202 Tenn. 608, 308 S.W.2d 393 (1957) (Article XI, Section 9 did not require local ratification for an act that discontinued all meetings of the circuit and chancery courts in one city and transferred all causes pending in such court to another city in the same county); *City of Knoxville ex rel. Roach v. Dossett*, 672 S.W.2d 193 (Tenn. 1984) (Article XI, Section 9 did not prevent the General Assembly from removing jurisdiction over state criminal offenses from the municipal courts of Knoxville, a home rule municipality, by an act applicable to counties falling within a specified population bracket). As cited above, Tenn. Code Ann. § 57-4-103(a)(1) provides that "[t]he provisions of this chapter shall be effective in *any jurisdiction* which authorizes such sales in a referendum in the manner prescribed by § 57-3-106." (Emphasis added). This statute is therefore general and statewide in nature and application. Further, it concerns a subject over which the Legislature has plenary power. Thus, it is our opinion that the fact that Lenoir City is a home rule municipality would not prevent or prohibit the election commission from calling and conducting a liquor-by-the-drink referendum pursuant to Tenn. Code Ann. § 57-4-103.

PAUL G. SUMMERS
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

ANN LOUISE VIX
Senior Counsel

Requested by:

Honorable Doug Overbey
State Representative
209 War Memorial Building
Nashville, TN 37243-0120