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OFFICE OF THE
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August 28, 2002

Opinion No. 02-092

Legality and Regulation of Sales of Beer and Liquor by the Drink in the City of Arlington

QUESTIONS

1. If the City of Arlington has no enforceable ordinances prohibiting sales of liquor by the drink, may liquor-by-the-drink sales occur within its boundaries without the holding of any additional municipal or county-wide liquor referenda?

2. Must the City of Arlington either conduct a referendum or have its Mayor and Board of Alderman take action to approve the sale of liquor by the drink?

3. Assuming sales of liquor by the drink are legal within the City of Arlington without an additional referendum or enactment by the Mayor and Board of Alderman, may the City of Arlington:
   (a) prohibit or ban the sale of liquor by the drink by city ordinance; or
   (b) prohibit or ban the sale of liquor by the drink by referendum?

4. Are City of Arlington Ordinances 2-113 and 2-114 invalid in that they ban "brown bagging" and the sale of alcoholic beverages for consumption on the premises?

5. May the City of Arlington's Board of Mayor and Alderman approve the sale of beer for on-premises consumption or must such beer sales be approved by a local referendum?

6. Currently, the City of Arlington prohibits the sale of beer and alcoholic beverages within 1000 feet of any hospital, school, church or place of public gathering. Would it be legal for the City to:
   (a) enact different distance requirements for different areas of the city, e.g., a 500-foot distance requirement for the downtown business district and a 1000-foot distance requirement for residential areas of the city?
   (b) exempt specific events or occasions such as a local barbeque competition from the distance requirement?

7. If sales of liquor by the drink are legal in the City of Arlington, are such sales legal in all of the various places and establishments described in T.C.A. § 57-4-101? If so, can the City of Arlington by ordinance or referendum limit sales of liquor by the drink to specific occasions or places described in T.C.A. § 57-4-101?

OPINIONS

1. Yes. Shelby County has previously approved liquor-by-the-drink sales through a county-wide referendum. This referendum made such sales legal within the City of Arlington.

2. No. Liquor-by-the-drink sales are legal in the City of Arlington for the reasons discussed in the answer to question number 1.

3(a). No. Liquor-by-the-drink sales within the city limits of Arlington can only be prohibited by voter referendum.

3(b). Yes. Liquor-by-the-drink sales may be prohibited within the City of Arlington by referendum.

4. Yes, these ordinances are invalid.

5. The sale of beer is presumptively legal in all jurisdictions, including the City of Arlington. However, the City of Arlington and other jurisdictions have been given the right to regulate beer sales through their ability to grant and deny permits. A municipality may go so far as to prohibit beer sales altogether. But there is not a need for a city-wide referendum to approve beer sales in the City of Arlington.

6(a). Yes. The City of Arlington may enact different distance requirements for the sale of beer in different, well-defined sections of its jurisdiction, so long as all beer permit applicants and holders within each of the defined sections are treated in a non-discriminatory manner.

6(b). Probably not. However, the case law and statutes do not directly address the factual situation presented in this question.

7. Sales of liquor by the drink are legal in all of the various establishments and places listed in T.C.A. § 57-4-101, so long as they obtain a proper license. The City of Arlington may not, either by ordinance or referendum, limit sales of liquor by the drink to only some of the establishments and occasions listed in T.C.A. § 57-4-101.

ANALYSIS

(1)

The instant request for an opinion was submitted with some background information, including the fact that Shelby County, Tennessee, on or about November 25, 1969, approved the sale of alcoholic beverages for consumption on the premises. Such sales are usually referred to as "liquor-by-the-drink" sales and will be designated as such in this opinion. Because Shelby County has approved sales of liquor by the drink through a county-wide referendum, such sales are legal in the City of Arlington.

Tennessee Code Annotated, Title 57, Chapter 4 addresses consumption of alcoholic beverages on the premises, or "liquor by the drink." Pursuant to Tenn. Code Ann. § 57-4-103(a)(1), "[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." Thus, a referendum to authorize the sale of liquor by the drink is to be conducted in the same manner as a referendum to authorize the sale of liquor not for consumption on the premises (i.e., through package stores) as described in § 57-3-106. While making this general reference, § 57-4-103 does not specify whether it incorporates merely the mechanics for a referendum set out in §57-3-106, or all of the intricate provisions of that section. Nevertheless, this Office has previously indicated that all of the provisions contained in § 57-3-106 apply to sales of liquor by the drink as well as to sales of liquor in package stores. As this Office stated in Op. Tenn. Atty. Gen. No. 87-139 (Aug. 18, 1987), the passage of a county referendum that authorizes the sale of liquor by the drink has the effect of permitting such sales within municipalities that meet the definition in Tenn. Code Ann. § 57-3-101(11)(those having a population of 1,000 or more) but do not fall within the exclusions of Tenn. Code Ann. § 57-3-106(g)(1)(those that are at least as populous as the smallest county, and certain tourist resorts).

What is relevant for our discussion is the fact that

> sales at retail as herein defined shall be made **only in the municipalities in such county as herein defined,** or within a civil district of such county, which district shall have a population of thirty thousand (30,000) persons or over according to the federal census for the year 1950 or any subsequent census, but which civil district shall not have lying either wholly or partly within its boundaries a municipality as herein defined.

Tenn. Code Ann. § 57-3-106(a)(1)(emphasis added). The definition of "municipality" in pertinent part is "an incorporated town or city having a population of one thousand (1,000) persons or over by the federal census of 1950 or any subsequent federal census." Tenn. Code Ann. § 57-3-101(11). Based upon the population of Arlington submitted with the opinion request - 2,569 - and the most recent federal census data available, the City of Arlington meets this definition of a municipality. Based upon this same information, the exclusion of certain municipalities from the effects of a county-wide referendum as described in Tenn. Code Ann. § 57-3-106(g)(1) does not apply to the City of Arlington,[1] because Arlington's population is, and always has been, smaller than the least

[1] This subsection provides,

> In those counties wherein are located **municipalities which have a population equal to or greater than the smallest county in Tennessee by the federal census of 1960 or by any succeeding federal census**, or any municipality having a population of one thousand seven hundred (1,700) or more persons according to the 1960 federal census in which at least fifty percent (50%) of assessed valuation of the real estate in the municipality consists of hotels, motels, and tourist courts and accommodations, as shown by the tax assessment rolls or books of the

populous county according to the 1960 and subsequent censuses.

The same basic statutory scheme was in place when Shelby County passed its liquor-by-the-drink referendum in 1969.[2] Thus, sales of liquor by the drink are legal in the City of Arlington and have been since the passage of the Shelby County referendum in 1969.

(2)

As discussed in the answer to question number 1, sales of liquor by the drink are already legal in the City of Arlington. There is no need for a municipal referendum to approve liquor-by-the-drink sales in the City of Arlington. A city's Mayor and Board of Alderman or other municipal governing body cannot approve liquor-by-the-drink sales. The Tennessee Code only provides for such approval by means of an appropriate referendum, either municipal or, as was the case with Shelby County, county-wide. The Tennessee Code does not provide for any means of approving liquor by the drink other than through such referenda.

(3)

(a) Just as liquor by the drink can only be approved by referendum, liquor by the drink once approved can only be prohibited by an appropriate referendum. The Mayor and Board of Alderman of Arlington cannot prohibit sales of liquor by the drink through the enactment of a city ordinance.

(b) Pursuant to the provisions of Tenn. Code Ann. §§ 57-3-106(b)(1)(A) and (2)[3], a

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> municipality, **the elections provided for in subsection (a) apply only to those portions of such county lying outside the corporate limits of such municipalities**, **it being the purpose and intent of this chapter that as to such counties no countywide election may be held in, nor shall its result affect, any such municipality, but whether or not the manufacture, receipt, sale, storage, distribution, transportation and/or possession of alcoholic beverages shall be permitted or prohibited within the corporate limits of such municipalities shall be determined solely by separate local option elections held in each municipality as provided by subsection (b) hereof**; provided, that in such counties wherein the manufacture, storage, sale, distribution, transportation, and/or possession of alcoholic beverages was legal on May 10, 1967, nothing herein shall affect the legality thereof in such counties and the municipalities thereof until the same shall be prohibited by separate local option elections held as provided in this section. Tenn. Code Ann. §57-3-106(g)(1) (emphasis added).

[2] *See* Tenn. Code Ann. §§ 57-101, -106, -152, -164 (1968 Replacement).

[3] The provisions of these statutes read in their entirety:

> (b)(1)(A) Except in counties having populations of:

municipality such as Arlington that comes within the specified population parameters may "by local option election, forbid the manufacture, receipt, sale, storage, transportation, distribution, and/or possession of alcoholic or intoxicating beverages within the territorial limits of the municipality, by a majority vote, at an election to be held as hereinafter provided." Such prohibition may be enacted by referendum and enforced "notwithstanding the fact that the county or any portion thereof in which the municipality is located has or has not voted to the contrary under any provision of this chapter." Tenn. Code Ann. § 57-3-106(c) describes how such referenda should be conducted including the form of the question presented to the voters. As discussed above, this provision governing package stores also applies to referenda concerning liquor by the drink, through the provisions of § 57-4-103(a)(3).

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not less than	nor more than
12,100	12,200
23,500	24,000
65,000	70,000

according to the 1970 federal census or any subsequent federal census, the voters of any municipality in this state which has been incorporated under a general or special law or laws of this state for five (5) years or longer and which has a population of nine hundred twenty-five (925) or more persons according to the federal census of 1970 or any subsequent federal census, except in municipalities with a population of not less than one thousand two hundred thirty (1,230) nor more than one thousand two hundred fifty (1,250) according to the 1970 federal census or any subsequent federal census, in any county having a population of not less than thirteen thousand five hundred (13,500) nor more than thirteen thousand six hundred (13,600) according to the 1970 federal census or any subsequent federal census, may, by local option election, permit the manufacture, receipt, sale, storage, transportation, distribution and/or possession of alcoholic beverages within the territorial limits of such municipality by a majority vote, at an election held as hereinafter provided, and in the event of such permission, the manufacture, receipt, sale, storage, transportation, distribution and/or possession of alcoholic beverages in such municipality shall be, and become lawful, notwithstanding the fact that the county or any portion thereof in which such municipality is located has, or has not, voted to the contrary under any other provision of this chapter, and the same shall continue to be lawful until the same is forbidden by the voters of such municipality, by majority vote thereof, at a local option election held as hereinafter provided. (B), (C) [Deleted by 1992 amendment.]

(2) In like manner, **the voters of any such municipality, at any time while this chapter is in effect, may, by local option election, forbid the manufacture, receipt, sale, storage, transportation, distribution, and/or possession of alcoholic or intoxicating beverages, within the territorial limits of the municipality, by a majority vote, at an election to be held as hereinafter provided, and in the event of such prohibition, the manufacture, receipt, sale, storage, transportation, distribution, and/or possession of alcoholic or intoxicating beverages in the municipality is unlawful, notwithstanding the fact that the county or any portion thereof in which the municipality is located has or has not voted to the contrary under any other provision of this chapter**; provided, that this does not apply to a bona fide manufacturer, actually engaged in manufacture under the provisions of any law of the state of Tennessee. (emphasis added)

Thus, even though sales of liquor by the drink are legal in the City of Arlington, as a result of the previous Shelby County referendum, the voters of Arlington may, through a referendum, prohibit such sales.

(4)

In Op. Tenn. Atty. Gen. No. 89-113 (Sept. 5, 1989), this office opined that a municipal ordinance that banned the practice of "brown bagging" was invalid and inconsistent with state law, at least with regard to businesses that possess a state license to sell liquor by the drink or such a license in addition to a local beer permit. In the same opinion, however, we noted that a municipal ordinance that bans the practice of "brown bagging" in establishments that possess only a local beer permit is valid and consistent with state law.

As noted in that opinion, "brown bagging" is defined as

> the practice of carrying a bottle of liquor into a restaurant or club where set-ups are available. Webster's Ninth New Collegiate Dictionary, 182 (1984). Apparently, that is the judicial usage of the term in Tennessee. *See Woods v. Holiday Inn of Murfreesboro*, 581 S.W.2d 648, 649-650 (Tenn. 1979). The one who carries the bottle of liquor into such a place is the one who is doing the brown bagging, not the restaurant or club; and such a person is referred to as a "brown bagger," not the restaurant or club. *Id*.

Opinion No. 89-113 addressed a municipality that had approved liquor by the drink pursuant to a municipal referendum, which is not the case with the City of Arlington. Yet, there are not any statutory provisions or case law known to us that would suggest that the opinion's holding would not apply to those few municipalities that have liquor by the drink pursuant to a county-wide referendum.

To the extent the provisions of Arlington ordinances 2-113 and 2-114[4] prohibit "brown

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[4] The provisions of these ordinances as provided by the Opinion requestor are as follows:

> 2-113. *Cocktail bars prohibited.* It shall be unlawful for any person to maintain a cocktail bar in the Town or to sell or serve ice, soda, or other mixtures for the purpose of mixing cocktails or highballs or any other intoxicating drinks to be consumed where ice, soda, or other mixtures are sold or served. The term "cocktail bar" as used in this section shall mean any public place where ice, soda, or other ingredients are sold or served by the owner or operator for the mixing of alcoholic beverage drinks. (Ord. of Oct. 4, 1965, sec. 14)
>
> 2-114. *Sales in unsealed bottles or for consumption on the premises.* No alcoholic beverages shall be sold for consumption on the premises of the seller. No wholesaler or retailer shall keep or permit to be kept upon his premises any

bagging" in establishments that have a state license to sell liquor by the drink, the ordinances are void. Also, the ordinances by their plain language prohibit sales of liquor by the drink generally and, thus, are invalid and unenforceable, because liquor-by-the-drink sales are permissible in the City of Arlington for the reasons discussed in the answer to question number 1.

(5)

The regulatory scheme governing the sale, manufacture, and traffic in beer and alcoholic beverages containing less than five percent (5%) alcohol by weight is set out in Title 57, Chapter 5 of the Tennessee Code. The state legislature has placed regulatory power over such beverages in local governments, which the legislature divides into three distinct categories: (1) cities and towns, (2) Class A counties consisting of counties not governed by metropolitan governments as defined in Tenn. Code Ann. § 7-2-101, and (3) Class B counties, consisting of counties governed by metropolitan governments. The sale of beer is presumptively legal in all jurisdictions, but cities and counties are given the right to regulate beer sales within their respective territories through their ability to grant and deny permits. In this regard, Tenn. Code Ann. § 57-5-103(a) provides,

> It is unlawful to operate any business engaged in the sale, distribution, manufacture, or storage of beer without a permit issued by the county or city where such business is located under the authority herein delegated to counties and cities.

Under Tenn. Code Ann. § 57-5-106(a) incorporated cities and Class B counties are "authorized to pass proper ordinances governing the issuance and revocation or suspension of licenses for the storage, sale, manufacture and/or distribution of beer." This same statute allows these cities and counties "to provide a board of persons before whom such application shall be made." Tenn. Code Ann. § 57-5-108(a)(1) speaks of "[a]ny permits or licenses issued under this chapter by the governmental body of any incorporated city, or by any committee or board created by such governmental body." A long line of court cases has held that Tennessee municipalities have extensive powers to regulate the sale, storage, and manufacture of beer within their corporate limits, even to the extent of completely banning the sale of beer. *See Watkins v. Naifeh*, 635 S.W.2d 104 (Tenn. 1982); *Thompson v. City of Harriman*, 568 S.W.2d 92 (Tenn. 1978); *Barnes v. City of Dayton*, 392 S.W.2d 813 (Tenn. 1965).

Thus, a city such as Arlington controls the traffic of beer within its corporate limits by virtue of its permit-issuing power and the ordinances its passes to delineate and enforce this power. The City of Arlington can create a "beer board" or similarly designated committee to oversee the issuance of beer permits. The Code's references to "the governmental body of any incorporated city" make clear that the governing body of a city decides if, and under what circumstances, beer will be sold within the city's corporate limits. A referendum is not necessary to approve beer sales in an

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> alcoholic beverages in unsealed bottles or other containers. (Ord. of Oct. 4, 1965, sec. 15)

incorporated city and the Tennessee Legislature has not given incorporated cities the right to conduct such a referendum.

(6)

(a) Incorporated municipalities such as Arlington and Class B counties (metropolitan governments) have the same right to pass ordinances regulating the sale, storage and manufacture of beer and the issuance of beer licenses as Tennessee counties, but they may impose additional restrictions on such sales. Section 57-5-106(a) provides in pertinent part:

> All incorporated cities, towns and Class B counties in the state of Tennessee are authorized to pass proper ordinances governing the issuance and revocation or suspension of licenses for the storage, sale, manufacture and/or distribution of beer within the corporate limits of the cities and towns and within the general services districts of Class B counties outside the limits of any smaller cities as defined in § 7-1-101(8) and to provide a board of persons before whom such application shall be made, but **the power of such cities, towns and Class B counties to issue licenses shall in no event be greater than the power herein granted to counties, but cities, towns and Class B counties may impose additional restrictions, fixing zones and territories and provide hours of opening and closing and such other rules and regulations as will promote public health, morals and safety as they may by ordinance provide.** (emphasis added)

Section 57-5-105(b)(1) provides, relevant to the issuance of beer permits that,

> (b) In order to receive a permit, an applicant must establish that:
>
> (1) No beer will be sold except at places where such sale will not cause congestion of traffic or interference with schools, churches, or other places of public gathering, or otherwise interfere with public health, safety and morals, the county legislative body having the right to forbid such storage, sale or manufacture within two thousand feet (2,000') of such places of public gatherings in its discretion.

This 2,000-foot limit defines the parameters of a local government's distance requirement. A local government may enact a distance requirement up to and including 2,000 feet. *See Youngblood v. Rutherford County Beer Board*, 707 S.W.2d 507 (Tenn. 1986). Thus, the City of Arlington may enact a distance requirement of less than 2,000 feet, such as the 1,000-foot rule it currently has.

This office has previously opined that a county may not enact and enforce different distance requirements for businesses that sell beer as "package stores" and businesses such as restaurants that

sell beer for on-premises consumption. *See* Ops. Tenn. Atty. Gen. Nos. U93-74 (June 17, 1993) and 01-157 (Oct. 25, 2001). In Opinion No. 01-157, we noted that a holder of a local beer permit, such as a package store or restaurant, was subject to a local distance requirement because it engaged in beer sales, one of the three enumerated activities in T.C.A. § 57-5-105(b)(1). However, a distance requirement that distinguishes between beer permit holders based on whether they allow consumption on the premises would go beyond the authority granted to counties by the legislature. *See Howard v. Wilcocks*, 525 S.W.2d 132 (Tenn. 1975).

As stated in *Youngblood v. Rutherford County Beer Board*,

> the legislative intent of the footage rule was based upon policy considerations prohibiting the sale of beer within a certain footage of churches, schools or other places of public gathering in order to protect these institutions, if the county legislative body which passed the footage rule applied the rule consistently and uniformly.

707 S.W.2d 507, 509 (Tenn. 1986). Although *Youngblood* and similar cases addressed situations in which a county legislative body had invalidated its distance requirement by issuing permits in violation of the footage limitation, we emphasized in Opinion No. 01-157 that the general prohibition against discriminatory application of a distance rule still applies. As noted *supra*, businesses may be subject to a local distance requirement because they engage in the storage, manufacture or sale of beer.

The instant question is whether the City of Arlington may enact two different distance requirements to be applied in different parts of the city. At first glance such varying distance requirements might appear to be an impermissible, discriminatory application of rules, since businesses would be subject to different distance requirements based on their neighborhood or geographic area. Yet, we note that our prior opinion addressed a county, and the legislature has given cities and Class B counties the power to "impose additional restrictions, fixing zones and territories" — power in addition to that given to counties generally.

The basic provisions of Tenn. Code Ann. § 57-5-106(a) have been in place since 1933. As noted in our answer to question number 5, a long line of court cases has held that Tennessee municipalities have extensive power to regulate the sale, storage, and manufacture of beer within their corporate limits, even to the extent of completely banning the sale of beer. Many of these cases focused on the provisions of this statute. *See Watkins v. Naifeh*, 635 S.W.2d 104 (Tenn. 1982); *Thompson v. City of Harriman*, 568 S.W.2d 92 (Tenn. 1978); *Barnes v. City of Dayton*, 392 S.W.2d 813 (Tenn. 1965). In *Madison v. City of Maryville*, the Supreme Court held that a city's omission of a specific location from specified streets on which businesses could sell beer was a permissible use of municipal regulatory power. 121 S.W.2d 540, 541 (Tenn. 1938). Similarly, the Court upheld a city's prohibition of beer sales within a prescribed and defined section — "within one city Block, on both sides of Market Street." *Barnes v. City of Dayton*, *supra*. The Court has also upheld municipal ordinances that set a limit on the number of beer permits issued within a city, even when

such ordinances prevented otherwise qualified beer permit applicants from receiving permits. *Barnes v. City of Dayton, supra*; *DeCaro v. City of Collierville*, 373 S.W.2d 466 (Tenn. 1963); *Ketner v. Clabo*, 225 S.W.2d 54 (Tenn. 1949).

This Office concludes that different distance requirements for different sections of the City of Arlington would be permissible so long as the different sections are well defined and permit holders or permit applicants within each section are treated the same. Our opinion is based on the plain language of the applicable statute which gives incorporated cities the right to impose additional restrictions "fixing zones and territories," not available to counties generally, as well as the large body of case law upholding the stringent and factually diverse regulation of beer sales by Tennessee cities. This Office, however, knows of no case that directly addresses the question. Additionally, this Office believes that a county, as opposed to a municipality, would not be able to enact and enforce different distance requirements for different sections or areas within its borders.

(b) Because incorporated cities may regulate beer sales in the same manner as counties, the City of Arlington may issue temporary beer permits. Tenn. Code Ann. § 57-5-105(g)(1) provides for such permits:

> Temporary beer licenses or permits not to exceed thirty (30) days' duration may be issued at the request of the applicant **upon the same conditions governing permanent permits.** Such a temporary license or permit shall not allow the sale, storage or manufacture of beer on publicly owned property. (emphasis added)

Such a temporary permit is undoubtedly the type of permit that an annual event of one or a few days duration would require. Whether such temporary permits for special civic or social events may be issued in disregard of the city's distance requirements is a more difficult question.

Although, as discussed in the answer to question 6(a), cities have great latitude in enforcing various rules and restrictions regulating the sale of beer, this Office is reluctant to state that a temporary beer permit for a civic or social event may be issued without regard to the distance requirements to which other businesses are subject. This is because such a permit would appear to be beyond the pale of the otherwise broad powers of municipalities to regulate beer sales. Many of the cases cited in the answer to question 6(a) stress that municipalities have such broad powers because cities are authorized to protect the health and welfare of their citizens. The municipal beer regulations and ordinances the Supreme Court upheld in those cases were restrictive and limited the places or times for beer sales. However, to carve out exceptions for temporary beer permits that would otherwise violate a city's distance requirements would dilute a restriction otherwise generally in effect. It would be a liberalization of the right to sell beer in obvious conflict with a city's determination that beer should not be sold within a certain distance of schools, churches and places of public gathering.

The Tennessee Supreme Court in interpreting the provisions of Tenn. Code Ann. § 57-5-108(a)(1) has said:

> That this enabling statute has been given the broadest possible construction by this Court cannot be doubted. [citations omitted] Nevertheless . . . this broad grant of power to the city fathers to regulate the sale of beer may not be exercised in a discriminatory or arbitrary manner. The restrictions and regulations chosen by the City must be such "as will promote public health, morals, and safety . . ..

The Pantry Inc. v. City of Pigeon Forge, 681 S.W.2d 23, 23 (1984). It does not seem that exempting an event or organization from a distance requirement that the city deems necessary to enforce against businesses can promote public health, morals and safety, since the distance requirements themselves are supposedly enacted to promote these worthy goals. Additionally, it appears unjustifiably discriminatory to allow an organization at a special event to sell beer near a school, church, or other place of public gathering when other, more permanent businesses are not allowed to sell beer in the same area.

Nevertheless, this Office does not know of a case that directly addresses the question. Yet, the fact that such temporary permits are to be issued "upon the same conditions governing permanent permits" certainly suggests that the same distance requirements must be enforced and followed. It is perhaps possible that the courts would uphold a city's exemption of temporary beer permits from the provisions of its distance requirements. Yet it is our best judgment that such an exemption would be invalid.

(7)

In a city such as Arlington where liquor-by-the-drink sales are permitted, wine and alcoholic beverages may be sold for consumption on the premises of a "hotel, commercial passenger boat company, paddle wheel steamboat company, restaurant, commercial airlines, or passenger trains meeting the requirements hereinafter set out, . . . wherein such is authorized under § 57-4-103." Tenn. Code Ann. § 57-4-101(a). This statute also lists other establishments such as aquariums where liquor by the drink may be sold. However, the statute also lists several places and sites at which alcoholic beverages and wine may be sold "subject to the further provisions of this chapter **other than § 57-4-103**." (emphasis added). Thus, liquor and wine may be sold at these sites, such as historic mansions, whether or not liquor by the drink has been approved locally by referendum.

As discussed in the answer to question 3(b), the City of Arlington may, by referendum, prohibit sales of liquor by the drink. However, the Code does not contemplate that a city such as Arlington may prohibit liquor-by-the-drink sales in only some of the places listed in Tenn. Code Ann. § 57-4-101(a) or the other sites listed in § 57-4-101. Additionally, those places listed in the statute where liquor-by-the-drink sales may take place "subject to the further provisions of this chapter other than § 57-4-103" have been granted the right to make such sales by the legislature even

in jurisdictions that have not passed liquor by the drink pursuant to a referendum. A city such as Arlington may not negate this privilege that has been granted by the legislature.

On the other hand, if the voters in the City of Arlington choose to prohibit liquor-by-the-drink sales, then such sales will be prohibited in all places, businesses and establishments except those where such sales are allowed regardless of local approval or disapproval of liquor by the drink, as authorized by Tenn. Code Ann. §§ 57-4-103 and -106.

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