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Opinion No. 06-113

City of Goodlettsville Referendum for Liquor by the Drink

QUESTIONS

1. If the City of Goodlettsville holds a referendum on whether to allow liquor by the drink, may such a referendum be confined to the precincts of the city that are located in Sumner County only?

2. If the referendum fails, would the Davidson County portion of Goodlettsville be prohibited from selling liquor by the drink?

OPINIONS

1. No. Tenn. Code Ann. § 57-4-105(a)(3) requires the participation of the municipality as a whole in a referendum to approve liquor by the drink.

2. Yes. Since the authority of counties is less than that of municipalities with regard to the regulation of alcohol sales, if an appropriate referendum were to be held within the municipality of Goodlettsville, and the referendum failed, the entire municipality would lose their ability to lawfully engage in liquor by the drink sales.

ANALYSIS

The City of Goodlettsville is located in both Davidson and Sumner Counties. At present, liquor by the drink is permitted in the portion of Goodlettsville that is located in Davidson County, because the voters of Davidson County by referendum have approved the sale of alcoholic beverages "for consumption on the premises" pursuant to Tenn. Code Ann. § 57-4-103. However, liquor by the drink is prohibited in the portion of Goodlettsville located in Sumner County because Sumner County has not passed a referendum to authorize of liquor by the drink.

1. In general, Tenn. Code Ann. § 57-3-106 authorizes a municipality to determine whether or not alcoholic beverages may be sold within its corporate limits. Tenn. Code Ann. § 57-3-106(b) permits the voters of any incorporated municipality to decide, by majority vote, whether

to allow the sale of alcoholic beverages within the territorial limits of the municipality. That statute further provides that a municipality may vote to allow or ban the sale of alcoholic beverages within its territorial limits, even if the county in which it is located has or has not voted to the contrary on a similar referendum.

The primary objective of statutory construction is to ascertain and give effect to the intent of the legislature. *State v. Denton,* 149 S.W.3d 1 (Tenn. 2004). Legislative intent is to be found, whenever possible, in the plain and ordinary meaning of the language of the statute. *State ex. rel. Pope v. U.S. Fire Ins. Co.,* 145 S.W.3d 529 (Tenn. 2004).

The language of Tenn. Code Ann. § 57-3-106 is unambiguous. By its terms, it requires a vote by the entire municipality to decide whether alcoholic beverages may be sold there. Therefore, if the City of Goodlettsville decides to hold a liquor by the drink referendum, it must be held city-wide.[1]

2. Tenn. Code Ann. § 57-3-106(b)(2) states that a municipality may forbid the sale of alcohol, "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." The City of Goodlettsville, as a municipality, has the authority to conduct a local option election to determine whether or not alcoholic beverages may be sold within its corporate limits. This power supersedes the power of both Davidson County and Sumner County, where each county has determined that it will or will not allow the sale of alcohol.[2] This authority is reinforced by Tenn. Code Ann. § 57-4-103(a)(3) which addresses the ability of municipalities to authorize the sale of packaged liquor in the same fashion. As a result of the municipality's authority, if an appropriate referendum were to be held in Goodlettsville, and the referendum failed, this would act to repeal liquor by the drink in the Davidson County portion of Goodlettsville.[3]

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[1]In Op. Tenn. Att'y Gen. 02-092 (copy attached) this office addressed the issue of whether the City of Arlington could vote to ban the sale of alcoholic beverages within its corporate limits even though Shelby County had voted to permit such sales. This office opined that, pursuant to Tenn. Code Ann. § 57-3-106, the City had the authority, by popular referendum, to ban the sale of alcoholic beverages within its territorial limits. Although the facts are different, in that the City of Arlington is located entirely within Shelby County, the reasoning of that opinion is instructive.

[2]This reading of the statute also coincides with the general theory of local option law, whereby the governing bodies of cities and counties may regulate the manufacture, sale, transportation and possession of alcohol within their territorial limits. *Thompson v. City of Harriman,* 568 S.W.2d 92, 95 (Tenn.1978). *See also Howard v. Willcocks,* 525 S.W.2d 132, 135 (Tenn. 1975), in which the Court opined that the authority of counties is substantially less than that of municipalities with regard to the regulation of alcohol sales.

[3]Due to the form the referendum must take, as required by Tenn. Code Ann. § 57-4-104(b), voters only have the option to vote for or against liquor by the drink. Thus, a majority of votes against liquor by the drink in the City of Goodlettsville would necessarily prohibit sales of liquor by the drink in the Davidson County portion of Goodlettsville.

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