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Opinion No. 07-104

Revocation and Suspension of Beer Permits and the Tennessee Responsible Vendor Act of 2006

QUESTIONS

1. May a beer permit holder's permit be revoked or suspended by the beer board based solely upon an employee's conviction or admission of selling beer to a minor in violation of Tenn. Code Ann. § 57-5-301(a)(1) (Supp. 2006)?

2. Can both the beer permit holder and the clerk who sold beer to a minor in violation of Tenn. Code Ann. § 57-5-301(a)(1) (Supp. 2006) be charged with and convicted of a Class A misdemeanor pursuant to Tenn Code Ann. § 57-5-301(a)(2) (Supp. 2006)?

3. Will a second conviction within one year's time of selling beer to a minor in violation of Tenn. Code Ann. § 57-5-301(a)(1) (Supp. 2006) result in the beer permit holder being guilty of a Class E felony pursuant to Tenn. Code Ann. § 57-5-303(c) (2002)?

4. After a beer permit holder's permit has been revoked, may this same permit holder reapply for a beer permit within ten years of the revocation considering the restrictions of Tenn. Code Ann § 57-5-301(a)(1) (Supp. 2006)?

5. May a person 18 years old or older but under 21 years old be charged with and convicted of a Class A misdemeanor for purchasing or possessing beer in violation of Tenn. Code Ann. § 57-5-301(e)(1) (Supp. 2006)?

6. With what offense can a minor under age 18 be charged for violations of Tenn. Code Ann. § 57-5-301(e)(1) (Supp. 2006)?

7. Can a beer board secretary and city attorney set the dates for a suspension or revocation of a beer permit after the board has determined to suspend or revoke a beer permit?

8. If it is determined that the beer board secretary does not have the authority to set the dates for a revocation or suspension of a beer permit, may this error be appealed to the courts pursuant to the judicial review and appeal process outlined in Tenn Code Ann. § 57-5-108(d), et seq. (Supp. 2006)?

OPINIONS

1. Yes, if not certified as a "responsible vendor," a beer permit holder's permit may be revoked or suspended based solely upon a beer board's finding that a permit holder's employee sold beer to a minor. However, pursuant to the Tennessee Responsible Vendor Act of 2006, codified in Tenn. Code Ann. § 57-5-601 et seq. (Supp. 2006), which became effective July 1, 2007, a permit holder's permit may not be suspended or revoked by a beer board based on a clerk's illegal sale of beer to a minor, provided the permit holder was certified as a "responsible vendor," the clerk was properly certified, and the permit holder had no knowledge of or reason to have knowledge of the violation.

2. Yes, both the beer permit holder and an employee may be charged with and convicted of a Class A misdemeanor for the sale of beer to a minor in violation of Tenn. Code Ann. § 57-5-301(a)(1) (Supp. 2006).

3. Yes, pursuant to Tenn. Code Ann. § 57-5-303(c) (2002), a second criminal conviction for selling beer to a minor in violation of Tenn. Code Ann. § 57-5-301(a)(1) (Supp. 2006) will result in a Class E felony for the permit holder, but this second conviction need not be within one year's time of the first.

4. No, a permit holder whose permit has been revoked at the discretion of the beer board and who also has an intoxicating liquor conviction on his record is not eligible to obtain a beer permit within 10 years of his or her conviction pursuant to Tenn. Code Ann. § 57-5-301(a)(1) (Supp. 2006). However, if a beer permit holder's permit has been "automatically and permanently revoked" due to two convictions for selling beer to a minor, the permit holder is permanently barred from reapplying for a beer permit pursuant to Tenn. Code Ann. § 57-5-303(c) (2002).

5. Pursuant to Tenn Code Ann. § 57-5-301(e)(1) (Supp. 2006), a person 18 years old or older, but under 21 years old, may be charged with and convicted of a Class A misdemeanor for possessing or transporting beer in violation of Tenn. Code Ann. § 57-5-301(e)(1) (Supp. 2006). A person 18 years old or older but under age 21 may be charged and convicted of a Class C misdemeanor for purchasing or attempting to purchase beer pursuant to Tenn. Code Ann. §§ 57-5-301(d)(1)(A) and -303(a) (2002 & Supp. 2006).

6. A minor under age 18 may be accused of violating any underage alcohol-related offense appropriate to the facts of the situation, including the underage purchase, attempted purchase, possession, or transportation of beer in violation of Tenn. Code Ann. § 57-5-301(d)(1) and (e)(1) (Supp. 2006). However, a person under age 18 may not be convicted of a criminal offense, unless the minor is transferred to the criminal court to be treated as an adult pursuant to Tenn. Code Ann. § 37-1-134 (Supp. 2006). Rather, a minor who commits an act that would be a crime if he or she had been an adult may be found "delinquent" pursuant to the Tennessee juvenile law provisions of Tenn. Code Ann. § 37-1-101 et seq. (2005).

7. No, the beer board alone, not the board secretary or city attorney, has the statutory

authority to impose and set dates for suspensions or revocations of beer permits for violating the provisions of the Tennessee code regulating the sale of beer.

8. Yes, a beer permit holder may take advantage of his or her statutory right to judicial review of an action or order of the local beer board via the statutory writ of certiorari to a Tennessee trial court with jurisdiction, pursuant to the procedures outlined in Tenn. Code Ann. § 57-5-108(d) et seq. (Supp. 2006).

ANALYSIS

1. Under current Tennessee law, beer permit holders engaged in the business of selling beer and like beverages, as well as "any employee" of the permit holder, are prohibited from making or permitting to be made any sales to minors.[1] Tenn. Code Ann. § 57-5-301(a)(1) (Supp. 2006). A violation of this provision is a Class A misdemeanor offense. Tenn. Code Ann. § 57-5-301(a)(2) (Supp. 2006). In addition to this criminal penalty, the beer board that issued the beer permit to the permit holder is authorized to revoke the permit, suspend the permit, or impose a civil penalty not to exceed $1,000 for "responsible vendors," and not in excess of $2,500 for permit holders not in compliance with responsible vendor status, for each offense involving a sale of beer to a minor. Tenn. Code Ann. § 57-5-108(a)(1)(A) and (B) (Supp. 2006).

The prohibition of sales to minors described in Tenn. Code Ann. § 57-5-301(a)(1) (Supp. 2006) applies to both the permit holder and "any employee" of the permit holder and proscribes both from either making or "permitting to be made" any sales to minors. Accordingly, a permit holder may be convicted of violating section 57-5-301(a)(1) (Supp. 2006) even if he or she personally did not make a sale to a minor but merely permitted an employee to make such a sale to a minor. *See Rowe v. State*, 1993 WL 295063, at *3 (Tenn. Crim. App. 1993) (upholding the conviction of the permit holder where an employee made the sale to a minor but the permit holder "permitted the sale to be made"). Moreover, the Tennessee Court of Appeals has held that in "section 57-5-301(a)(1) of the Tennessee Code, knowledge is not made an essential element to the offense. Thus, it is an offense to sell beer to a minor, regardless of the intent or knowledge of the seller." *Sigler v. Metropolitan Beer Permit Board*, 62 S.W.3d 732, 734 (Tenn. Ct. App. 2001) (holding that a permit holder was liable for violating Tenn. Code Ann. § 57-5-301(a)(1) for selling beer to a minor regardless of the fact that the minor falsely presented identification indicating he was over 21). Thus, a permit holder may be found in violation of selling beer to a minor: (1) even if the permit holder did not personally make the sale but rather permitted an employee to make a sale to a minor, and (2) even if the permit holder or the employee had no specific intent to make the sale to a minor, and no knowledge that the customer was in fact underage.

In addition to the criminal penalties, Tenn. Code Ann. § 57-5-108(a)(1)(B) (Supp. 2006)

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[1]For the purposes of alcoholic beverage regulation in Tennessee, a "minor" is anyone under the age of 21. Tenn. Code Ann. §§ 1-3-105(1) and -113 (2003 & Supp. 2006).

permits a local beer board discretion to revoke, suspend or impose a monetary civil penalty on non-responsible vendors for the infraction of making or permitting to be made a sale to a minor.[2] However, subpart (b) of this same section also states that a beer permit cannot be revoked if the operator or any person working for the operator sold beer to a minor over the age of 18 after that minor exhibited identification, false or otherwise, indicating that the minor's age was 21 or over, and if the minor's appearance was such that the person making the sale did not know he or she was a minor. In such instances, the beer board is limited only to suspending the beer permit for up to 10 days or imposing a penalty of up to $1,500. Tenn. Code Ann. § 57-5-108(b) (Supp. 2006).

Accordingly, under the law prior to July 1, 2007, and under the current governing statutes as they apply to permit holders not certified as responsible vendors or not in compliance with such certification, a beer board has the discretion to revoke[3] or suspend a permit holder's permit based solely on the fact that the permit holder's employee was found guilty of selling beer to a minor in violation of Tenn. Code Ann. § 57-5-301(a)(1) (Supp. 2006), unless the sale was to a minor over age 18 who presented identification falsely stating the minor was 21 or over and who also appeared to be 21 or over. In the latter scenario, the beer board would not be allowed to revoke the permit holder's permit but would still be allowed to suspend the permit or impose a monetary penalty.

However, under the Tennessee Responsible Vendor Act of 2006, the provisions of which became effective on July 1, 2007, beer permit holders who are properly certified[4] may take advantage of new safe harbor provisions protecting their permits from revocation due to the indiscretions of their employees. The purpose of the act is, in part, to "restrict or reduce the sanctions that may be imposed in administrative proceedings by local beer boards against vendors who voluntarily comply with responsible practices . . . ." 2006 Tenn. Pub. Acts 864, § 3. As such, Tenn. Code Ann. § 57-5-608(a) (Supp. 2006) states that a beer permit "may not be suspended or revoked by a beer board based on a clerk's illegal sale of beer to a minor person who is not of lawful drinking age, if the clerk is properly certified and has attended annual meetings since the original certification, or is within

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[2]Upon the second conviction of making or permitting to be made any sale of any alcoholic beverage to a minor, a permit holder's permit is "automatically and permanently revoked." Tenn. Code Ann. § 57-5-303(c) (2002).

[3]Pursuant to Tenn. Code Ann. § 57-5-108(a)(1)(C), which became effective July 1, 2007, a permit holder would have to have two violations within a twelve-month period for a permanent revocation.

[4]Tenn. Code Ann. § 57-5-601 et seq. (Supp. 2006) (effective July 1, 2007) sets forth in detail all of the requirements necessary for a permit holder to receive "responsible vendor" certification.

sixty-one (61) days of the date of hire at the time of the violation."[5] Under the revised provisions of Tenn. Code Ann. § 57-5-108(a)(1)(A) (Supp. 2006), a beer board shall not "revoke or suspend the permit of a responsible vendor for a clerk's illegal sale of beer to a minor" as long as the conditions of the responsible vendor certification have been properly satisfied and maintained. However, the beer board still "may impose" a civil penalty of not more than $1,000 for each offense of selling beer to a minor. *Id.*

In sum, the new statutory provisions which became effective July 1, 2007, establish a two-track statutory scheme to control the civil penalties available to local beer boards electing to penalize permit holders found to have permitted an employee to sell beer to a minor. First, pursuant to the provisions of Tenn. Code Ann. § 57-5-601 et seq. (Supp. 2006), a permit holder who is certified as a "responsible vendor" is not subject to having his or her permit revoked or suspended but is subject to a civil penalty of no more than $1,000. However, permit holders who are not certified as a "responsible vendor" or who fail to comply with the provisions of such certification are subject to having their permits revoked or suspended or to the imposition of a fine of up to $2,500.

2. As noted above, both the permit holder and "any employee" of the permit holder are prohibited from making or permitting to be made any sales to minors pursuant to Tenn. Code Ann. § 57- 5-301(a)(1) (Supp. 2006). A violation of this provision is a Class A misdemeanor offense pursuant to Tenn. Code Ann. § 57-5-301(a)(2) (Supp. 2006). In *Rowe v. State*, 1993 WL 295063 (Tenn. Crim. App. 1993), the Tennessee Court of Criminal Appeals held the prohibition that both permit holders and their employees "shall not make or permit to be made sales to minors" in Tenn. Code Ann. § 57-5-301(a)(1) is intended to prohibit both "the hands-on exchange of beer for cash" by a sales clerk *and* the passive allowance of such sales by a permit holder. Upon upholding the convictions of both a permit holder and a sales clerk stemming from the same sale, the Court stated: "It is the holding of this Court that the prohibition against the sale of beer to minors codified at Tennessee Code Annotated § 57-5-301(a)(1) extends to both the license-holding employer and the clerk employee." *Rowe*, 1993 WL 295063, at *4. Accordingly, both a beer permit holder and any clerk who sold beer to a minor can be charged with and convicted of a Class A misdemeanor under Tenn. Code Ann. § 57-5-301(a)(2) for selling beer to a minor in violation of subsection (a)(1).[6]

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[5]This statute goes on to state that the vendor's "responsible vendor" certification may be revoked if the vendor "had knowledge of the violation or should have known about the violation, or participated in or committed the violation." Tenn. Code Ann. § 57-5-608(b) (Supp. 2006) (effective July 1, 2007). In such cases, the permit holder is to be penalized by the beer board as if he or she was not certified as a responsible vendor. *Id.*

[6]While the Tennessee Responsible Vendor Act of 2006 re-wrote subsection (a)(1) of Tenn. Code Ann § 57-5-301 (Supp. 2006), the relevant language, which states that "[a] permit holder engaging in the business regulated hereunder or any employee thereof shall not make or permit to be made any sales to minors," remained the same under both the old law and the current law that became effective July 1, 2007. Likewise, while the civil penalties available to the beer board to punish permit holders for sales to minors have been altered under the new law, the criminal provisions of Tenn. Code Ann. §§ 57-5-301(a)(2) and 57-5-303 (2002 & Supp. 2006) have not been altered.

3. The penalty for a permit holder's first violation for making or permitting to be made a sale of beer to a minor in violation of Tenn. Code Ann. § 57-5-301(a)(1) (Supp. 2006) is a Class A misdemeanor. Tenn. Code Ann. § 57-5-301(a)(2) (Supp. 2006). Upon a second conviction of making or permitting sales of beer to a minor, the permit holder is guilty of a Class E felony. Tenn Code Ann. § 57-5-303(c) (2002). Because the language of section 303 applies only to permit holders, and not "any employee" as expressly addressed in section 301, the escalation to a Class E felony offense for a second conviction is reserved exclusively for beer permit holders and does not apply to their employees. Additionally, there is no provision in the code stating that a permit
holder's second conviction must come within one year of the first to trigger the Class E felony offense.[7]

4. In addition to precluding permit holders and their employees from making or permitting to be made any sales to minors, Tenn Code Ann. § 57-5-301(a)(1) (Supp. 2006) also states: "Neither the person engaging in such business nor persons employed by that person shall be a person who has been convicted of any violations of the laws against possession, sale, manufacture and transportation of intoxicating liquor . . . within the last ten (10) years." This provision prohibits anyone with such a criminal conviction within 10 years from either engaging in the business of selling beer or being employed by someone engaged in the sale of beer. As such, a person with the described criminal conviction on his or her record would not be eligible to apply, or re-apply, for a beer permit until 10 years after the date of the conviction. While there is no statutory definition for "intoxicating liquors" as used in part 5 of chapter 57,[8] the Tennessee Supreme Court has defined beer as included in the term intoxicating liquor. *King v. State*, 174 S.W.2d 463 (Tenn. 1943). Accordingly, under the current law, a permit holder whose permit was revoked at the discretion of the beer board for a conviction of any violation of the laws against possession, sale, manufacture and transportation of intoxicating liquor, including beer, is not eligible to obtain another permit within 10 years of this conviction.

However, if a beer permit holder is convicted a second time of "making, or permitting to be made, any sale of alcoholic beverages, beer or wine" to a minor, then the permit holder's permit "shall be automatically and permanently revoked regardless of any other punishment actually imposed." Tenn. Code Ann. § 57-5-303(c) (2002). Accordingly, under these circumstances a

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[7]We note that under the new law that became effective on July 1, 2007, a beer board is restricted from permanently revoking a beer permit unless the permit holder has at least two violations within a twelve month period, *see* Tenn. Code Ann. § 57-5-108(a)(1)(C) (Supp. 2006), and may revoke a permit holder's status as a "responsible vendor" for three years if the vendor has two violations within a twelve-month period, *see* Tenn. Code Ann. § 57-5-608(c) (Supp. 2006). However, these changes to the civil penalties available to a local beer board in no way affect the criminal penalties outlined in Tenn. Code Ann. §§ 57-5-301 and -303 (2002 & Supp. 2006).

[8]"Intoxicating Liquors" is defined in Tenn. Code Ann. § 57-2-101(a) (2002); however, this definition is limited to the term as used in Chapter 2 pertaining to manufacturing of alcoholic beverages.

permit holder is precluded from ever again holding a beer permit, regardless how many years have elapsed since the conviction.

The Tennessee Responsible Vendor Act of 2006 added several new provisions to the law governing the permanent revocation of beer permits. As of July 1, 2007, the "[p]ermanent revocation of beer permits may only be applied when the permit holder has at least two (2) violations within a twelve-month period." Tenn. Code Ann. § 57-5-108(a)(1)(C) (Supp. 2006). The broad language of this new provision limits both the discretionary authority of a beer board to impose permanent revocations of beer permits under Tenn. Code Ann. § 57-5-108 (Supp. 2006) and the automatic permanent revocation of beer permits due to criminal convictions under Tenn. Code Ann. § 57-5-303(c) (2002). Additionally, the new statutory provisions make it clear that the revocation of a beer permit applies only to that permit holder at that location, and does not affect the permits held by the same permittee at other locations. Tenn. Code Ann. § 57-5-108(a)(1)(D) (Supp. 2006).

In sum, a permit holder whose permit was revoked at the discretion of the local beer board and who also was convicted of an intoxicating liquor violation is eligible to again obtain a beer permit only after 10 years have passed since the criminal conviction, pursuant to Tenn. Code Ann. § 57-5-301(a)(1) (Supp. 2006). However, if a beer permit holder's permit has been "automatically and permanently revoked" due to two convictions for selling beer to a minor, the permit holder is permanently barred from reapplying for a beer permit pursuant to Tenn. Code Ann. § 57-5-303(c) (2002). Of course, under the new statutory provisions that went into effect on July 1, 2007, a beer board may not revoke the permit of a permit holder because of a clerk's sale of beer to a minor unless the permit holder was not certified as a "responsible vendor" or failed to comply with the responsible vendor requirements. Tenn Code Ann. § 57-5-108(a)(1)(B) (Supp. 2006). Additionally, a beer board's ability to permanently revoke a beer permit, as well as the automatic permanent revocation of a permit for a second criminal conviction of sale of beer to a minor, are both limited to situations where the permit holder has two violations within a twelve-month period. Tenn. Code Ann. §§ 57-5-108(a)(1)(C) (Supp. 2006) and 57-5-303(c) (2002).

5. Tenn. Code Ann. § 57-5-301(e)(1) (Supp. 2006) makes it "unlawful for any person under twenty-one (21) years of age to have in the person's possession beer for any purpose, [and to] transport beer for any purpose" except in the course of employment. Tenn. Code Ann. § 57-5-301(e)(2) (Supp. 2006) makes a violation of this prohibition a Class A misdemeanor. Tenn. Code Ann. § 57-5-301(d)(1)(A) (Supp. 2006) makes it "unlawful . . . for any minor to purchase or attempt to purchase" beer. A violation of this section is punishable as a Class C misdemeanor. Tenn Code Ann. § 57-5-303(a) (2002).

Persons ages 18 or older but under age 21 who purchase or possess beer or other alcoholic beverages may also be subject to several other criminal offenses depending on the factual circumstances, including but not limited to: the Class A misdemeanor offense of underage purchasing, possession, transportation or consumption of alcoholic beverages, wine or beer pursuant to Tenn Code Ann. § 1-3-113(b) (2003); the Class A misdemeanor offense of underage consumption, possession, or transportation of beer or any other intoxicating liquor pursuant to Tenn

Code Ann. § 57-3-412(a)(3) (Supp. 2006); the Class A misdemeanor offense of underage purchasing or attempting to purchase any alcoholic beverages pursuant to Tenn Code Ann. § 57-3-412(a)(5) (Supp. 2006); the Class A misdemeanor offense of underage purchasing or attempting to purchase or possess any alcoholic beverages pursuant to Tenn Code Ann. § 57-4-203(b)(2) (Supp. 2006); and any applicable local ordinances or municipal laws pertaining to underage purchasing, possession, transportation or consumption of beer or other alcoholic beverages.

6. A minor, or "child," which term is statutorily defined as a person under 18 years of age,[9] may be charged with, or petitioned to be declared delinquent of, any underage alcohol related offense appropriate to the facts of the situation, including underage purchase, possession or transportation of beer in violation of the provisions of Tenn. Code Ann. § 57-5-301 (Supp. 2006). However, a person under age 18 may not be criminally convicted of these or any other criminal offenses, unless the minor is transferred to a criminal court to be treated as an adult pursuant to the provisions of Tenn. Code Ann. § 37-1-134 (Supp. 2006). Rather, a minor who commits an act that would be a crime if he or she had been an adult may be declared "delinquent" by a Tennessee juvenile court pursuant to the Tennessee juvenile law provisions of Tenn. Code Ann. § 37-1-101, et seq. (2005).

The juvenile court has exclusive original jurisdiction over persons under age 18 alleged to be delinquent. Tenn. Code Ann. § 37-1-103(a)(1) (2005); *State v. Hale*, 833 S.W.2d 65, 66 (Tenn. 1992). Children subject to the juvenile court's jurisdiction are not considered to be criminals and are not tried as criminals. *State v. Jones*, 418 S.W.2d 769, 770 (Tenn. 1966). According to the Tennessee code governing juvenile matters, one of the reasons for creating the juvenile court was to "remove from children committing delinquent acts the taint of criminality and the consequences of criminal behavior and substitute therefor a program of treatment, training and rehabilitation." Tenn. Code Ann. § 37-1-101(a)(2) (2005). Accordingly, a person under age 18 who purchased or attempted to purchase beer or who possessed or transported beer in violation of Tenn. Code Ann. § 57-5-301(d)(1) and (e)(1) (Supp. 2006) may not be criminally convicted of such crimes. Rather, the minor may be accused of committing the offenses and, if found in violation of the provisions by a juvenile court, be declared delinquent.

Regarding procedure, there are two methods by which a person under age 18 may be "charged" with an underage beer or alcoholic beverage offense. If a person's status as minor is not immediately recognized and the minor is criminally charged, and a criminal matter is initiated in a court other than a juvenile court, that court must transfer the minor's case, along with all of the accusatory pleadings, to the juvenile court upon recognizing that the accused is a minor. Tenn. Code Ann. § 37-1-109 (2005). Alternatively, the state may file a petition directly with the juvenile court seeking to have the accused minor declared delinquent. Tenn. Code Ann. § 37-1-108(4) (2005).

We note that in addition to the underage beer-related offenses listed in Tenn. Code Ann. § 57-5-301 (Supp. 2006), a minor may also be found delinquent of any of the other underage alcohol

[9]Tenn. Code Ann § 37-1-102(4)(A) (2005).

related offenses addressed in the Tennessee Code, including but not limited to those addressed above in our response to question 5. In short, persons under age 18 may be accused of and found delinquent of the same underage alcohol related offenses of which a person over 18 but under 21 may be charged with and convicted.

7. Pursuant to Tenn. Code Ann § 57-5-108, a local beer board is granted the authority to penalize beer permit holders found to have violated "any provisions" of title 57, chapter 5, addressing beer and alcoholic beverages containing less than five percent alcohol, or "whenever it shall satisfactorily appear that the premises of any person, firm or corporation holding a permit or license under [chapter 5] are being maintained and operated in such a manner as to be detrimental to public health, safety or morals." Tenn. Code Ann. § 57-5-108(c) (Supp. 2006). The three penalties available to the local beer board are: (1) revocation of the permit, (2) suspension of the permit, or (3) the imposition of a monetary civil penalty. Tenn. Code Ann. § 57-5-108(a)(1) (Supp. 2006). By statute, the disciplinary authority to suspend or revoke a beer permit is provided exclusively to the municipality, county, or "any committee, board, or commission created by these governmental bodies." *Id.*

Once a local beer board has been established, it alone has the statutory authority to revoke or suspend a beer permit. Setting the dates for a suspension or revocation of a beer permit is essential to the disciplinary action of revocation or suspension itself and therefore cannot be set by anyone other than the local beer board. In sum, Tenn. Code Ann. § 57-5-108 (Supp. 2006) grants the local beer board the authority to discipline beer permit holders, and this authority may not be delegated to persons or entities, such as secretaries or city attorneys, not authorized by the Code to suspend or revoke beer permits.

8. Any permit holder who has been subject to disciplinary action by a local beer board has the statutory right to have the action or order of the board "reviewed by statutory writ of certiorari" in the circuit or chancery court of the county in which the order was issued. Tenn. Code Ann. § 57-5-108(d) (Supp. 2006). This de novo review under the statutory writ is the "sole remedy and exclusive method of review" of any action of the local beer board. Tenn. Code Ann. § 57-5-108(f) (Supp. 2006); *see also* Tenn. Code Ann. § 57-5-108(j) (Supp. 2006). The trial judge has the authority to supersede the action of the local board for good cause. Tenn. Code Ann. § 57-5-108(g) (Supp. 2006). Additionally, the permit holder also has the right to appellate review of the trial court's ruling. Tenn. Code Ann. § 57-5-108(d) (Supp. 2006).

The judicial review provisions of Tenn Code Ann. § 57-5-108(f) (Supp. 2006) allow a permit holder whose permit has been revoked or suspended by the local beer board to obtain review of such "action or order." A "petitioning party" has the duty to show there is "good cause" for the board's action or order to be superseded by the trial court. Tenn. Code Ann. § 57-5-108(g) (Supp. 2006). The Tennessee Supreme Court has held that the sale of beer in a locality is subject to that locality's police power, and absolute discretion is given to the governing body of that locality to effect regulation and control. *Beer Bd. for City of Goodlettsville v. Brass A Saloon of Rivergate,* 710 S.W.2d 33, 35 (Tenn. 1986). Accordingly, the "only limitation" on the local beer board's authority

in regulating the sale of beer is that it "act in good faith and not in a discriminatory and arbitrary manner." *Id.*

Presuming that a permit holder's beer permit was revoked or suspended in whole or in part by a person or entity other than the local beer board tasked with disciplinary authority over beer permit holders such as, for example, a secretary, such a permit holder may exercise his or her right to both judicial review of the "board's" order and appellate review of the trial court's holding pursuant to the provisions of Tenn. Code Ann. § 57-5-108 (Supp. 2006).

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