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Opinion No. 08-09

Sale of Beer on Golf Courses and at Outdoor Events

QUESTIONS

1. May a beer board issue an on-premises beer permit in the name of a golf course, rather than in the name of a restaurant located within the clubhouse, and thereby allow the golf course to sell beer on the course itself since the permit is not limited to the confines of the restaurant but to the confines of the golf course property?

2. Is a beer board prohibited from issuing a beer permit to an applicant that is seeking a beer permit for an outdoor event that is not located contiguous to the applicant business's building?

3. Based on [Tennessee Attorney General] Opinion 01-117, is a golf course patron authorized to consume beer purchased on the course itself?

4. Due to the nature of golf courses, is not the golf course itself to be considered an outdoor serving area that is contiguous to the clubhouse?

OPINIONS

1. Yes, a local beer board may, at its discretion, issue an on-premises beer permit to a golf course, thereby allowing the sale of beer within the confines of the golf course property.

2. No, a local beer board is not prohibited from issuing a beer permit to an applicant that seeks a permit for an outdoor event that is not held contiguous to the applicant business's building.

3. A golf course patron may purchase and consume beer on the course itself if the local beer board has issued an on-premises beer permit for the course. Alternatively, if a golf course clubhouse has been issued an off-premises permit, a golf course patron may purchase beer in the clubhouse for consumption outside on the golf course.

4. No, the golf course itself is not considered an outdoor serving area that is contiguous to the clubhouse.

ANALYSIS

The four questions addressed in this opinion pertain to the sale and consumption of beer. The manufacture, distribution and sale of alcoholic beverages and beer are highly regulated through numerous Tennessee statutes. *State ex rel. Amvets Post 27 v. Beer Bd. of the City of Jellico*, 717 S.W.2d 878, 879 (Tenn. 1986). The Tennessee Supreme Court has noted that these "statutes are detailed and complex, and they have been enacted piecemeal over the years with frequent amendments." *Id*. at 880. Regardless of the inherent difficulty in interpreting such complex and incohesive code provisions, several foundational principles are well established. The laws regarding the sale of alcoholic beverages and beer are set forth in Title 57 of the Tennessee Code. Tennessee has two separate licensing schemes for selling intoxicating beverages. Licensing for the sale of "alcoholic beverages," which includes spirits with an alcoholic content of five percent or more, and thus is generally applicable to sales of hard liquor and wine, is governed by Tenn. Code Ann. §§ 57-3-101 *et seq*. Permits for the sale of beer are governed by Tenn. Code Ann. §§ 57-5-101 *et seq*. While "[t]he Tennessee Alcoholic Beverage Commission has generally been given primary, although not exclusive, responsibility for regulating the distribution and sale of alcoholic beverages other than beer," *Beer Bd. of the City of Jellico*, 717 S.W.2d at 881,[1] regulatory authority for the sale and consumption of beer has been statutorily delegated to the local government.[2] As noted by the Tennessee Supreme Court, "it has been long held in this state that, consistently with T.C.A. § 57-5-108, municipalities have extensive authority to regulate the sale of beer within their boundaries. This includes the authority to limit the number and location of retail outlets, both for on-premises and off-premises consumption."[3] *Id*.

Tenn. Code Ann. § 57-5-103(a)(1) prohibits businesses from engaging in the sale of beer without an appropriate local permit. Specifically, Tenn. Code Ann. § 57-5-103(a)(1) states that "[i]t 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 . . . ." (emphasis added). Subsection (a)(2) states that "[p]ermits shall be issued to the owner of *the business* . . . ." (emphasis added). Finally, subsection (a)(3)(B) states that "[a] permit shall be valid [o]nly for a *single location"* and "[a] permit shall be valid for all decks, patios and other outdoor serving areas that are contiguous to the exterior of *the building in which the business is located . . . ."* (emphasis added).

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[1] *See also* Tenn. Code Ann. §§ 57-1-101 through 57-4-308.

[2] *See also* Tenn. Code Ann. § 57-5-103 *et seq*.

[3] The courts have noted that "[t]he only limits placed on the cities' regulatory powers are found in the state and federal constitutions, the state statutes, and in the requirement that cities cannot exercise their power in an arbitrary or discriminatory manner." *Martin v. Beer Bd. for City of Dickson*, 908 S.W.2d 941, 946 (Tenn. Ct. App. 1995) (citing *Beer Bd. v. Brass A Saloon of Rivergate, Inc.*, 710 S.W.2d 33, 35 (Tenn. 1986)).

As noted above, each local beer board has the discretion to decide to whom it will issue beer permits and what type of beer permits it will issue. Accordingly, a beer board would have the authority to determine, if it wished, to grant an on-premises beer permit in the name of a golf course rather than in the name of a restaurant or clubhouse. If a golf course is issued an on-premises beer permit that defines the premises as the entire golf course, the permit holder would, of course, be allowed to sell beer on the course itself as opposed to being limited to selling beer only within the confines of a clubhouse or restaurant. Indeed, there are several Tennessee municipalities that have established golf courses as a classification in their respective municipal ordinances and have granted such on-premises permits to golf courses.

For example, the Tennessee cities of Adamsville, Athens, Hendersonville, and White House have all authorized the issuance of beer permits to golf courses. The White House municipal code expressly includes golf courses under the class of permits titled "on-premises" permits, stating that "[f]or proprietors of golf courses, on-premises shall mean within the building or on any decks, patios and other outdoor serving areas that are contiguous to the exterior of the building *and/or on the course."* White House, Tenn., Code § 8-208(3) (emphasis added).[4] An Athens, Tennessee, municipal ordinance includes a similar provision, allowing that "[b]eer may be sold for consumption on the premises only with the premises defined as any clubhouse, pro shop, restaurant, *or the playing course itself*." Athens, Tenn., Code § 8-211(3)(vii) (emphasis added).[5] Likewise, Adamsville, Tennessee includes a provision for golf course permits in its code which states that "the term 'on premises consumption' shall mean consumption within the building . . . except if the license is held by the proprietor of a golf course, on premises shall mean within the building *and/or on the course.*" Adamsville, Tenn., Code § 8-209 (emphasis added). Similarly, Hendersonville, Tennessee also allows on-premises beer permits for golf courses pursuant to its local ordinance § 8-223(7). In short, local municipalities have the discretionary authority to define the geographic limitations of "on-premises" to include an entire golf course if they so desire.

2. While a conventional on-premises beer permit issued to a business located in a building generally limits the sale of beer to that building and areas contiguous to its exterior, a local beer board is not prohibited from issuing an additional temporary permit for an outdoor event held away from the permit holder's primary business location. A temporary beer permit is provided for in Tenn. Code Ann. § 57-5-105(g)(1), which states: "[t]emporary 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." Thus, a local beer board is not prohibited from issuing a separate,

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[4]The ordinance also places the following limitations on beer sales on a golf course: "However, no consumption shall be permitted on any parking lot. Where on-premises consumption is permitted on a golf course, beer may be purchased either at the restaurant or from a beverage cart." White House, Tenn., Code § 8-208(3).

[5]The Athens ordinance sets forth the following limitation: "No consumption shall be permitted in or on the parking lot" and "[a]ny beer consumed on the premises of the golf course, whether within any building or on the playing course itself, must be purchased at the golf course from the operator thereof." Athens, Tenn., Code § 8-211(3)(vii).

temporary beer permit for a location not in or contiguous to the regular business location of an existing permit holder. Such a temporary permit would certainly allow for the sale of beer at an outdoor event. Again, the applicant would be subject to the same conditions governing permanent beer permits.

Additionally, the alcoholic beverage special occasion license outlined in chapter 4 of Title 57 provides further evidence that temporary permits to sell beer at outdoor events may be granted. Tenn. Code Ann. § 57-4-101(g) states that "[i]t is lawful for a charitable, nonprofit or political organization possessing a special occasion license pursuant to § 57-4-102 to serve or sell wine and other alcoholic beverages as defined in § 57-4-102, *and beer* as defined in § 57-6-102, to be consumed on a designated premises within the boundaries of a political subdivision wherein the sale of alcoholic beverages at retail has been approved." (emphasis added). Also, the caterer permit outlined in Tenn. Code Ann. § 57-4-101(a)(14) provides that "[i]t is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, *and beer* as defined in § 57-6-102, to be consumed on the premises of, or within the boundaries of, any [c]aterer licensed under this chapter as well as at such other sites as the licensed caterer has given advanced notice to the commission." (emphasis added).

As addressed previously, Tennessee's intoxicating beverage regulatory scheme separates the local regulation of beer from the state regulation of other alcoholic beverages. The state Alcoholic Beverage Commission administers the sale of alcoholic beverages not classified as beer pursuant to the provisions in chapter 4 of Title 57. Accordingly, the reference to "beer" in the special occasion and caterer permit provisions of Tenn. Code Ann. § 57-4-101 is simply a clarification that those vendors licensed to sell alcoholic beverages are not prevented from also selling beer. However, the provisions of Tenn. Code Ann. § 57-4-101 are not an absolute grant of the right to sell beer in defiance of local requirements. Rather, the holder of a license granted by the Alcoholic Beverage Commission must also obtain an appropriate permit from the local beer board in order to sell beer pursuant to a special occasion or caterer's permit.

3. The next inquiry is whether Tenn. Code Ann. § 57-5-103(a)(1), as interpreted by this Office in Op. Tenn. Att'y Gen. No. 01-117 (July 24, 2001), authorizes a golf course patron "to consume beer purchased on the course itself." Op. Tenn. Att'y Gen. No. 01-117 states that "beer sales on the course itself are not permissible under the grant of power given to the clubhouse or restaurant permit holder" and "the only way a golf course patron could purchase beer on the course itself, away from the clubhouse or restaurant, would be at a building for which a separate permit has been issued." This prior opinion presumed that the sale of beer was based upon an on-premises permit "procured by a clubhouse or restaurant located on the premises of a golf course." The opinion, limited to the scope of the question it addressed, did not contemplate the issuance of an on-premises beer permit to a golf course itself as addressed in the answer to question one above. Thus, Opinion No. 01-117 correctly stated that an on-premises permit granted to a clubhouse or restaurant located on a golf course would not allow for the sale of beer on the course itself. However, as noted above, a local beer board may issue a permit which defines on-premises to include a golf course, thereby allowing the sale of beer on the course itself.

If the local government has issued an on-premises permit to the golf course, then by definition consumption would be permitted on the course. If the course does not have an on-premises permit, and a golfer brings beer onto the course that has been procured from some other off-premises location, consumption would be permitted if allowed by the course owner and not contrary to any other local ordinances. *Cf. Lovelace v. City of Knoxville*, 2001 WL 293001, at *2 (Tenn. Ct. App. March 27, 2001) (reasonable regulation of the consumption of beer by local ordinance is a valid exercise of a local government's police power).

4. Tenn. Code Ann. § 57-5-103(a)(3)(B) states that "[a] permit shall be valid for all decks, patios and other outdoor serving areas that are contiguous to the exterior of the building in which the business is located and that are operated by the business . . . ." This office previously stated in Op. Tenn. Att'y Gen. No. 01-117 that beer sales on the course itself are not permitted under the grant of power given to the clubhouse or restaurant permit holder because the golf course is not considered an outdoor serving area contiguous to the clubhouse. The opinion explained that a golf course does not constitute an "outdoor serving area" within the meaning of the statute, nor is a golf course like a deck or a patio, which is an extension of the clubhouse or restaurant designed for customers wishing to dine outdoors. Rather, the golf course is a distinct place used to play the sport of golf. Accordingly, the clear statutory language of Tenn. Code Ann. § 57-5-103(a)(3)(B) cannot reasonably be construed to contemplate an entire golf course as an outdoor serving area contiguous to a clubhouse. But, as addressed above, beer can be consumed on a golf course if an on-premises permit has been issued for the course, or with the owner's permission if there is no other local ordinance prohibiting a golfer from consuming beer purchased from an off-premises permittee and brought onto the course.

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