

**STATE OF TENNESSEE**  
OFFICE OF THE  
**ATTORNEY GENERAL**  
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Opinion No. 08-141

Operation of More than One (1) Licensed Retail Liquor Store

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**QUESTIONS**

1. Does Tenn. Code Ann. § 57-3-406(a) prohibit a husband and wife from each owning a retail package store?
2. Does Tenn. Code Ann. § 57-3-406(a) prohibit other family members (i.e. parents, children, and siblings) from owning a retail package store?

**OPINIONS**

1. Tenn. Code Ann. § 57-3-406(a) does not expressly prohibit a husband and wife from each owning a retail package store, so long as any interest is disclosed pursuant to Tenn. Code Ann. § 57-3-104(c)(2) and the requirements as set forth in Tenn. Code Ann. § 57-3-204 are met. However, the Commission may make factual findings upon appropriate evidence that a spouse, rather than the license applicant, would be the person in control of the retail license, and that the interests of the spouse and the applicant spouse are so intertwined as to be in contravention to the statute. In such a case, the Commission could deny the application for the retail license of the applicant spouse.

2. Tenn. Code Ann. § 57-2-406(a) does not expressly prohibit family members of a licensed retail package store owner from obtaining their own, independent, retail license, so long as any interests are disclosed pursuant to Tenn. Code Ann. § 57-3-104(c)(2) and the requirements set forth in Tenn. Code Ann. §§ 57-3-204 and 57-3-210(f)(1) are met. Again, the Commission may make a factual finding if warranted by the evidence that the applicant can not comply with the statutory requirements and deny the application for a license.

**ANALYSIS**

1. In pertinent part, Tenn. Code Ann. § 57-3-406(a) provides:

No retailer licensed under § 57-3-204 shall, directly or indirectly, operate more than one (1) licensed retail business in this state.

“Indirectly” means any kind of interest in such a retail business by way of stock ownership, loan, partner’s interest or otherwise.

The statute does not expressly prohibit spouses from holding licenses for separate retail liquor establishments. Tenn. Code Ann. § 57-3-406(a) does, however, prohibit a retail licensee from indirectly operating more than one (1) business in the state. In the statute, “indirectly” is defined broadly and refers to “any kind of interest in such a retail business by way of stock ownership, loan, partner’s interest or otherwise.”

The issue whether one spouse directly or indirectly owns or controls a business that is owned by the other is a question of fact that the Commission may consider in deciding whether to issue a retail liquor license.<sup>1</sup> For example, in *Ledbetter v. Townsend*, 15 S.W.3d 462 (Tenn. Ct. App. 1999), the court ruled that a wife would not be eligible to obtain a retail liquor license where her husband was already an owner of a retail package store, and the evidence provided at the hearing indicated that the husband had obtained the forms from the ABC, had been at the center for the negotiations for the purchase of a second retail establishment, and was more than likely going to be the person in charge of the second retail store.<sup>2</sup>

2. The same holds true for other relatives of a retail liquor licensee. As outlined above, the Commission may deny a retail liquor license where another person or corporation has a financial interest in the business and would dominate the applicant in operating the business, especially if such other person is an unsuitable person. See 48 C.J.S. Intoxicating Liquors § 146, *State ex rel. Nixon v. McCanless*, 176 Tenn. 352, 355, 141 S.W.2d 885, 886 (Tenn. 1939), and *McCanless v. State ex rel. Hamm*, 181 Tenn. 308, 181 S.W. 2d 154 (Tenn. 1944).

Licensees are required by statute to hold their liquor licenses free from the control of others. If family members of licensees can provide sufficient evidence to the Commission to show that they intend to conduct their business independent of the licensed relative, then the Commission can lawfully granted a retail liquor license to the applicant. Furthermore, if the Commission subsequently learns that the permittee is not the person in control of his or her license, the Commission has the authority under Tenn. Code Ann. § 57-3-104 to revoke the offending license.

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<sup>1</sup>In cases involving the granting or denial of licenses, licensing authorities are vested with considerable discretion, and their decisions will not disturbed unless it clearly appears that they have acted arbitrarily or illegally. *State ex rel. Nixon v. McCanless*, 176 Tenn. 352, 355, 141 S.W.2d 885, 886 (Tenn. 1939).

<sup>2</sup>In *State ex rel. Nixon v. McCanless*, 176 Tenn. 352, 141 S.W.2d 885 (Tenn. 1939), the Supreme Court upheld ABC’s denial of a liquor license to a wife, when she was not previously connected to the liquor business, knew nothing of the liquor business and had no business experience. In doing so, the Court found that any “rationally minded” person would conclude that an attempt was being made on the part of her husband to do indirectly what he could not do directly because his retail liquor license had been previously revoked. *Id.* at 886. Notably, as evidenced by the cases cited herein, Courts have declined to interpret Tenn. Code Ann. § 57-3-406(a) as a blanket prohibition against each spouse holding a retail liquor license.

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