

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 08-170

Application of Tennessee's Adult-Oriented Establishment Act to Strip Clubs

QUESTION

Do the Sunday, legal holiday, and other closing regulations in Tennessee's Adult-Oriented Establishment Act, contained in Tenn. Code Ann. § 7-51-1402, apply to strip clubs?

OPINION

Tenn. Code Ann. § 7-51-1405 exempts a strip club operating as an adult cabaret “that offers only live, stage adult entertainment” from the Sunday, legal holiday, and other closing regulations in Tenn. Code Ann. § 7-51-1402. When an adult-oriented establishment is offering lap, couch, table, and other non-stage adult entertainment in close proximity to patrons, it is not within the scope of the exemption and must comply with the hours of operation restrictions in Tenn. Code Ann. § 7-51-1402.

ANALYSIS

Tennessee's Adult-Oriented Establishment Act, Tenn. Code Ann. § 7-51-1401, *et seq.*, specifies operational restrictions regarding adult-oriented establishments. Tenn. Code Ann. § 7-51-1401 (4) defines “adult-oriented establishment,” in pertinent part, as follows:

“Adult-oriented establishment” means any commercial establishment, business or service, or portion thereof, that offers, as its principal or predominant stock or trade, sexually-oriented material, devices, or paraphernalia or specified sexual activities, or any combination or form thereof, whether printed, filmed, recorded or live and that restricts or purports to restrict admission to adults or to any class of adults. “Adult-oriented establishment” includes, but is not limited to:

. . .

(C) “Adult shows” or “adult peep shows” [which] means all adult shows, exhibitions, performances or presentations that contain acts or depictions of specified sexual activities[.]

Pursuant to Tenn. Code Ann. § 7-51-1401 (10),

“Specified sexual activities” means activities, services or performances that include the following sexual activities or the exhibition of the following anatomical areas:

- (A) Human genitals in a state of sexual stimulation or arousal;
- (B) Acts of human masturbation, sexual intercourse, sodomy, cunnilingus, fellatio or any excretory function, or representation thereof; or
- (C) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

Tenn. Code Ann. § 7-51-1402 specifies the following hours of operation restrictions for an adult-oriented establishment:

- (a) No adult-oriented establishment shall open to do business before eight o'clock a.m. (8:00 a.m.), Monday through Saturday; and no such establishment shall remain open after twelve o'clock (12:00) midnight, Monday through Saturday. No adult-oriented establishment shall be open for business on any Sunday or a legal holiday as designated in § 15-1-101.

Tenn. Code Ann. § 7-51-1405 provides the following exemption:

The opening and closing time limitations placed on adult-oriented establishments in § 7-51-1402 *shall not apply to an establishment or the portion of an establishment that offers only live, stage adult entertainment in a theatre, adult cabaret, or dinner show type setting.*

(Emphasis added).¹ Under Tenn. Code Ann. § 7-51-1401(2), the definition of “adult cabaret” appears to include strip clubs within its scope.

“Adult cabaret” means a cabaret that features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers[.]

¹ “Adult entertainment” means any exhibition of any adult-oriented motion picture, live performance, display or dance of any type, that has as a significant or substantial portion of such performance, any actual or simulated performance of specified sexual activities, including removal of articles of clothing or appearing unclothed[.] Tenn. Code Ann. § 7-51-1401(3).

It is the opinion of this Office that a strip club “that offers only live, stage adult entertainment” would be exempt from all of the hours of operation restrictions within Tenn. Code Ann. § 7-51-1402, including the restrictions prohibiting operations on Sundays and legal holidays. To qualify for this exemption, the establishment must *only* offer live, *stage adult entertainment*. An adult-oriented establishment that is offering lap, couch, table and other non-stage adult entertainment in close proximity to patrons would not qualify for the exemption.

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