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Opinion No. 09-20

Retail Package Sales of Alcoholic Beverages

QUESTION

After a properly conducted local option election, can an incorporated town or city, with a current population of less than one thousand (1,000) residents, conduct retail package sales when, according to a previous federal census, the town or city had a population in excess of one thousand (1,000) residents?

OPINION

Yes. So long as the incorporated town or city had a population of one thousand (1,000) persons or more by the federal census of 1950, or any subsequent federal census, the incorporated town or city meets the definition of a "municipality" found in Tenn. Code Ann. § 57-3-101(b)(11) and is therefore authorized to conduct retail package sales.

ANALYSIS

The sale of alcoholic beverages in Tennessee counties may be permitted by a local option election. Tenn. Code Ann. § 57-3-102. Voters of any county may elect to permit the sale of alcoholic beverages for off-the-premises consumption, also known as retail package sales, pursuant to Tenn. Code Ann. § 57-3-106(a)(1). Once a county has passed such a package sales referendum, package sales may be conducted only in municipalities within the county as defined in Tenn. Code Ann. § 57-3-101(a)(11). Tenn. Code Ann. § 57-3-101(a)(11) defines municipality as, "an incorporated town or city having a population of one thousand (1,000) persons or over by the federal census of 1950 or any subsequent federal census. . .."

The objective of statutory construction is to ascertain and give effect to the intent of the legislature. *In re Adoption of A.M.H.*, 215 S.W.3d 793 (Tenn. 2007). If the statutory language is plain and unambiguous, courts will apply its plain meaning. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918 (Tenn. 2007). In considering the meaning of a statute, courts also apply a rule

of construction that the express mention of a subject or subjects in a statute means the exclusion of subjects that were not mentioned. *Wells v. Tenn. Bd. of Regents*, 231 S.W.3d 912 (Tenn. 2007).

Tenn. Code Ann. § 57-3-101(a)(11) clearly and unequivocally states that the term "municipality" includes cities having a population of one thousand (1,000) persons or over by the federal census of 1950 or any subsequent federal census. A plain reading of the statutory language indicates that, so long as an incorporated town or city had a population of one (1,000) persons or more by any federal census conducted after 1950, the town or city becomes a municipality within the meaning of Tenn. Code Ann. § 57-3-101(a)(11). Additionally, the absence of language to limit the consideration of the most recent census to determine whether a city or town meets the definition of municipality indicates that the Legislature intended that any census subsequent to 1950 could be considered for the purposes of determining which cities or towns could conduct retail package sales after a properly conducted referendum pursuant to Tenn. Code Ann. § 57-3-106(a)(1).

This conclusion is further supported by *Hall v. State*, 124 Tenn. 235, 137 S.W. 500 (1910). In that case, the Tennessee Supreme Court held that population classifications are prospective in operation. They thus operate to permit counties, or in this case, cities to come within the classification and to enjoy the benefits of that status prescribed by law, but not to fall out of the classification and those benefits merely by a change in population above or below a designated number.[1] *See also State v. Boyd*, 867 SW.2d 330, 333 (Tenn. Crim. App. 1992).

Therefore, once an incorporated town or city reaches a population of one thousand (1,000) or more according to a federal census after 1950, the town or city is classified as a municipality as per Tenn. Code Ann. § 57-3-101(B)(11), and may conduct retail packages sales if permitted by local option election conducted pursuant to Tenn. Code Ann. § 57-3-106(a)(1).

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Attorney General and Reporter

[1] *Hall* involved a stock law that was applicable to counties having a population of not less than 35,000, nor more than 36,250 by the federal census of 1900 or any subsequent federal census. In the census of 1910, Montgomery County had a population of 33,672. In holding that the stock law was applicable to Montgomery county even though it had fallen below the specified population parameters, the court stated, "[T]he classification was prospective in its operation, permitting other counties to come into the classification of the benefits prescribed by the act; but it did not permit counties to fall out of the classification merely by a change in population above or below the designated number."

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