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Opinion No. 09-40

Confidentiality of Municipal Inspection Fee Information

QUESTIONS

Where there is a request directed to a municipality for information with regard to the amount of municipal inspection fees paid by each retail liquor store located in the municipality, is that information confidential or available for public dissemination?

OPINIONS

The information is not confidential and is available for public dissemination upon request.

ANALYSIS

Pursuant to Tenn. Code Ann. §§ 57-3-501 *et seq*., a municipality has "the authority to impose by ordinance an inspection fee upon licensed retailers of alcoholic beverages . . . located within such municipality." Tenn. Code Ann. § 57-3-501(a) (2002). A wholesaler making a sale to a retailer within the municipality shall collect the inspection fee from the retailer and remit it to the municipality each month with a report describing, among other things, the alcoholic beverages sold, the wholesale price of the beverages, and the tax due. Tenn. Code Ann. § 57-3-503(a) (2002).

Pursuant to Tenn. Code Ann. § 10-7-503(a)(2)(A) (Supp. 2008), "[a]ll . . . state, county and municipal records shall . . . be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." Monthly municipal inspection fee reports constitute "records" because they are "documents . . . made or received pursuant to a law or ordinance or in connection with the transaction of official business by any governmental agency." Tenn. Code Ann. § 10-7-503(a)(1) (Supp. 2008). Thus, unless state law provides an exemption from the right of public inspection, the monthly reports and their information are not confidential and are available for public dissemination.

State law does not provide any such exemption under Tenn. Code Ann. § 10-7-504 (Supp. 2008) or elsewhere. The monthly reports are not confidential under Tenn. Code Ann. §§ 67-1-1701 *et seq*. (the "Tax Confidentiality Act"). The Tax Confidentiality Act only applies to taxes administered or collected by the Tennessee Department of Revenue. Tenn. Code Ann. § 67-1-1701(5), (7), and (8) and -1702(a) (2006 and Supp. 2008). The municipal inspection fee is a fee, not a tax, *Memphis Retail Liquor Dealers' Ass'n v. City of Memphis*, 547 S.W.2d 244, 246

(Tenn. 1977), and is administered and collected by municipalities, not the Department. Tenn. Code Ann. § 57-3-503 (Supp. 2008).

Thus, because monthly municipal inspection fee reports and their information are public records that are not otherwise deemed confidential and exempt from the right of public inspection, they are available for public dissemination upon request.

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