**S T A T E O F T E N N E S S E E**
OFFICE OF THE
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Opinion No. 09-41

Sale of Beer to a Minor or Person Without Identification Not a Crime Involving Moral Turpitude

## QUESTION

Is a conviction for a violation of Tenn. Code Ann. § 57-5-301(a)(1) -- the sale of beer to a minor or to a person who does not present proper identification indicating date of birth -- a crime involving moral turpitude?

## OPINION

No. The offenses of sale of beer to a minor or person not presenting proper identification as outlined in Tenn. Code Ann. § 57-5-301(a)(1) are strict liability offenses, the violation of which do not rise to the level of "baseness, vileness, or depravity" required for an offense to be classified as a crime involving moral turpitude.

## ANALYSIS

Tenn. Code Ann. § 57-5-301(a)(1) states, in relevant part, that a beer permit holder or any employees of the permit holder "shall not make or permit to be made any sales to minors," nor may any sales of beer for off-premises consumption be made "to a person who does not present [a valid, government-issued] document or other form of identification." Accordingly, persons holding a permit to sell beer and all employees of such permit holders violate subdivision (a)(1) of Part 3, Chapter 5 of Title 57 of the Tennessee Code Annotated if they: 1) sell beer to a minor, or 2) sell beer to a person who does not present proper identification.[1] A violation of either of these offenses "is a Class A misdemeanor." Tenn. Code Ann. § 57-5-301(a)(2).

Tenn. Code Ann. § 57-5-301(a)(1) further states that neither the beer permit holder nor persons employed by the permit holder "shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture and transportation of intoxicating liquor or any crime involving moral turpitude within the last ten years." The specific question

[1] While the sale of beer to *anyone* who fails to present the requisite identification is a criminal offense pursuant to Tenn. Code Ann. § 57-5-301(a)(1), this same statute also provides that "it is an exception to any criminal punishment or adverse administrative action, including license suspension or revocation, as provided for in this section if the sale was made to a person who is or reasonably appears to be over fifty (50) years of age and who failed to present an acceptable form of identification."

asked in this request is whether the Class A misdemeanor offense of selling beer to a minor or selling beer to any person who does not present proper identification could be classified as a crime involving moral turpitude.

The Tennessee Supreme Court has held that "the term moral turpitude refers to an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted rule of right and duty between man and man." *Gibson v. Ferguson*, 562 S.W.2d 188, 189 (Tenn. 1976) (*citing Brooks v. State*, 213 S.W.2d 7, 11 (Tenn. 1948)); *see also State v. Morgan*, 541 S.W.2d 385, 388 (Tenn. 1976); Op. Tenn. Att'y Gen. No. 95-37; Op. Tenn. Att'y Gen. No. 98-225. Furthermore, the Court has determined that "'moral turpitude' means 'something immoral in itself, regardless of the fact that it is punished by law. It must not merely be *malum prohibitum*, but the act itself must be inherently immoral."' *State Board of Medical Examiners v. Freidman*, 263 S.W. 75, 82 (Tenn. 1924) (citing favorably to *Ex Parte Marshall*, 93 So. 471 (Ala. 1922)). In 2008 this Office examined existing Tennessee cases on crimes involving moral turpitude and opined that, in Tennessee, intentional crimes historically held to be "intrinsically and morally wrong" such as theft and burglary are usually considered crimes involving moral turpitude, while strict liability crimes such as DUI and failure to stop at a stop sign are not. Op. Tenn. Att'y Gen. No. 08-108 (May 14, 2008).

A thorough analysis of Tennessee case law, as well as analogous law on moral turpitude from several federal courts, reveals that whether a crime rises to the level of "baseness, vileness or depravity" necessary to be considered a crime involving moral turpitude depends in large measure on the culpable mental state requisite of the particular offense at issue. Op. Tenn. Att'y Gen. No. 08-108. Accordingly, this Office previously opined that offenses requiring intent or a knowing mens rea are good candidates for classification as crimes involving moral turpitude, while offenses requiring only the lesser culpable mental state of "recklessness" would also require some other aggravating factor before being considered potential crimes involving moral turpitude. Op. Tenn. Att'y Gen. No. 08-108.

As complex as this area of law is, it is nonetheless relatively clear from the case law that in Tennessee a strict liability offense -- where proof of the act itself is sufficient for conviction without consideration of any particular culpable mental state -- does not qualify as a crime involving moral turpitude. *See* Op. Tenn. Att'y Gen. No. 95-37 (Apr. 18, 1995) (driving under the influence (DUI), a strict liability crime, is not a crime involving moral turpitude); *see also Flowers v. Benton County Beer Board*, 302 S.W.2d 335, 339 (Tenn. 1957) (holding that "driving an automobile while under the influence" is "not an act involving moral turpitude."); *Gibson*, 562 S.W.2d at 188 (failure to release seventeen bluegill fish is not a crime involving moral turpitude); *Davis v. Wicker*, 333 S.W.2d 921, 923 (Tenn. 1960) (failure to stop at a stop sign is not a crime involving moral turpitude); *Hatchett v. State*, 552 S.W.2d 414, 415 (Tenn. Ct. App. 1977) (simple possession of marijuana is not a crime of moral turpitude); and *Bolin v. State*, 472 S.W.2d 232, 235 (Tenn. Crim. App. 1971) (vagrancy and public drunkenness are not crimes of moral turpitude).

The Tennessee Court of Criminal Appeals has expressly stated that "[c]riminal strict liability is defined as '[a] crime that does not require a mens rea element, such as traffic offenses

and *illegal sales of intoxicating liquor*."' *Swanson v. Knox County*, 2007 WL 4117259, at *5 (Tenn. Ct. App. 2007) (quoting Black's Law Dictionary 400 (8th ed. 2004)) (emphasis added); *see also Sigler v. Metropolitan Beer Permit Bd.*, 62 S.W.3d 732, 734 (Tenn. Ct. App. 2001) (holding that "it is an offense to sell beer to a minor, regardless of the intent or knowledge of the seller"). As such, the "illegal sales of intoxicating liquor" such as the sale of beer to a minor or to a person not presenting proper identification as outlined in Tenn. Code Ann. § 57-5-301(a)(1), are strict liability offenses not requiring any mental state, and therefore do not rise to the level of an "inherently immoral" offense. Nor do such strict liability offenses result in the commission of an act of "baseness, vileness, or depravity" that would lead to classification as a crime involving moral turpitude. Thus, a violation of Tenn. Code Ann. § 57-5-301(a)(1) is not a crime involving moral turpitude.

However, a conviction for a violation of Tenn. Code Ann. § 57-5-301(a)(1), either selling beer to a minor or to a person not presenting proper identification (unless the purchaser was over 50 or reasonably appeared to be over 50 years of age), would nonetheless preclude that person from engaging in the sale of beer for at least 10 years. Tenn. Code Ann. § 57-5-301(a)(1) states: "Neither the person engaging in such business nor persons employed by that person shall be a person who has been convicted of any violation of the laws against possession, sale, manufacture and transportation of intoxicating liquor or any crime involving moral turpitude within the last ten (10) years." While the sale of beer to a minor or to a person not presenting proper identification is not a crime involving moral turpitude, it is a Class A misdemeanor in violation of the "laws against [the] . . . sale . . . of intoxicating liquor." Tenn. Code Ann. § 57-5-301(a)(1).

While there is no statutory definition for "intoxicating liquors" as used in chapter 5 of Title 57,[2] the Tennessee Supreme Court has defined beer so as to be included in the term intoxicating liquors. *King v. State*, 174 S.W.2d 463 (Tenn. 1943); *see also Giles v. The Front Porch Restaurant*, 1986 WL 1152, at *2-3 (Tenn. Ct. App. 1986) (citing to Am.Jur 2d, Black's Law Dictionary, and *King v. State* as support for its holding that the term "intoxicating liquors" includes beer). Because beer is an "intoxicating liquor" as the term is generally used in Tennessee, a conviction for a violation of Tenn. Code Ann. § 57-5-301(a)(1) would prevent the violator from lawfully selling beer for at least 10 years.

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[2] "Intoxicating Liquors" is defined in Tenn. Code Ann. § 57-2-101(a); however, this definition is expressly limited to the term as used in Chapter 2 pertaining to manufacturing alcoholic beverages.

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