

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

November 13, 2009

Opinion No. 09-177

Licensed Auctioneer Holding a License as an Alcoholic Beverage Collector

QUESTION

May an alcoholic beverage collector, as defined in Tenn. Code Ann. § 57-3-209(b), who is also a licensed auctioneer, sell, at auction, collectible alcoholic beverages?

OPINION

Yes. An alcoholic beverage collector, who is also a licensed auctioneer, may sell his or her collectible alcoholic beverages at auction, so long as the auctioneer/collector and all bidders are present in person and within sight and sound of each other while the auction is conducted.

ANALYSIS

Tenn. Code Ann. § 57-3-209 creates a new category of license for the sale of alcoholic beverages by an “alcoholic beverage collector.” In pertinent part, it states:

(a) Any individual qualifying as an alcoholic beverage collector as defined in this section, may apply to the commission for a license as an alcoholic beverage collector, authorizing that individual to purchase wine, distilled spirits and other alcoholic beverages from any entity authorized to sell such products and shall be authorized to sell, in a face to face transaction only, collectible alcoholic beverages, as defined in this section, to any person twenty-one (21) years of age or older. Such license may be issued notwithstanding the requirements of § 57-3-106.

Tenn. Code Ann. § 57-3-209(a).

To qualify as an “alcoholic beverage collector,” certain statutory requirements must be met. An individual must collect commemorative bottles of alcoholic beverages which are displayed in a location that is open to the public. The collector may only sell such collectible alcoholic beverages through a face to face transaction with the purchaser, and the purchase must

be made only for the purpose of collection and not consumption.¹ Tenn. Code Ann. § 57-3-209 (a) and (b).

The primary objective of statutory construction is to ascertain the intent of the legislature. *LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772, 777 (Tenn. 2000). If the statutory language is clear and unambiguous, that intent is to be found “from the natural and ordinary meaning of the statutory language within the context of the entire statute without any forced or subtle construction that would extend or limit the statute's meaning.” *State v. Flemming*, 19 S.W.3d 195, 197 (Tenn. 2000). “[I]f the language of a statute is clear, we must apply its plain meaning without a forced interpretation.” *Calaway ex rel. Calaway v. Schucker*, 193 S.W.3d 509, 514 (Tenn. 2005).

There is nothing in the language of Tenn. Code Ann. § 57-3-209 to suggest that the legislature intended to prohibit licensed auctioneers, or any other person who holds any other occupational or professional license, from also holding an alcoholic beverage collector’s license. Therefore, a licensed auctioneer is eligible to obtain a license as an alcoholic beverage collector, as long as that person has satisfied the requirements of Tenn. Code Ann. § 57-3-209.

Tenn. Code Ann. § 57-3-209 also requires that purchases and sales of collectible alcoholic beverages be face to face. Defined in common parlance, “face to face” means “within each other’s sight or presence: in person.” Webster’s New Collegiate Dictionary 409 (1977). Therefore, if a licensed alcoholic beverage collector/auctioneer decides to sell collectible alcoholic beverages at auction, in order to have a lawful sale under Tenn. Code Ann. § 57-3-209, such sales would have to be conducted during a live auction with the auctioneer and all bidders present in person and within physical sight and sound of each other while the auction is conducted.

ROBERT E. COOPER, JR.
Attorney General and Reporter

MICHAEL E. MOORE
Solicitor General

¹ Furthermore, the sales price of the collectible alcoholic beverage must be at least three hundred percent (300%) of the price of the same brand, vintage, quantity, and type of alcoholic beverage that is available from a licensed retailer. Tenn. Code Ann. § 57-3-209(e).

LYNDSAY FULLER SANDERS
Assistant Attorney General

Requested by:

Honorable Judd Matheny
State Representative
205 War Memorial Building
Nashville, TN 37243