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August 17, 2010

Opinion No. 10-92

Hours for the Sale of Beer in a Municipality Located Within a Tennessee River Resort District

## QUESTION

If a county, rather than a municipality, has authorized the sale of liquor by the drink by voting to accept Tennessee River resort district status as provided in Tenn. Code Ann. § 57-4-101(a)(19), does the Alcoholic Beverage Commission ("ABC") under the provisions of Tenn. Code Ann. § 57-5-301(b)(5) or any other statute control the hours for the sale of beer in a municipality located in such river resort district?

## OPINION

No. Tenn. Code Ann. § 57-5-301(b)(5) is applicable where a municipality through its own action has authorized the sale of liquor by the drink. In the instant fact scenario, the county, but not the municipality separately, has authorized the sale of liquor by the drink. The limitations on the hours for sale found in Tenn. Code Ann. § 57-3-406(e) apply to the sale of alcoholic beverages, but not beer. Furthermore, these limitations are set forth in the statute and are not controlled by the ABC's rules. The ABC may extend the hours of sale set forth in Tenn. Code Ann. § 57-4-203(d)(1) only where the sale of liquor by the drink was approved by referendum of a municipality or a metropolitan government, but not a county. In the instant scenario, the municipality itself did not approve the sale of liquor by the drink, so the ABC plays no role in setting the hours for sales of beer in that municipality.

## ANALYSIS

Pursuant to Tenn. Code Ann. § 67-6-103(a)(3)(F) (Supp. 2009), certain counties and municipalities may elect to become a "Tennessee River resort district" ("TRRD"). Such an election affects the distribution of sales and use tax revenues to TRRD counties and municipalities. See Op. Tenn. Att'y Gen. No. 08-85 (Apr. 7, 2008). Pursuant to Tenn. Code Ann. § 57-4-101(a)(19) (Supp. 2009), it is lawful to sell wine, alcoholic beverages, and beer to be consumed on the premises of or within the boundaries of a TRRD[1], which is defined as

> a club, hotel, motel or restaurant located within a jurisdiction that has elected Tennessee River resort district status pursuant to the provisions of § 67-6-

[1] Certain counties that elect to be a TRRD may limit the election so that they are not considered TRRDs with regard to Tenn. Code Ann. § 57-4-101 et seq. Tenn. Code Ann. § 67-6-103(a)(3)(F)(ii)(b) (Supp. 2009).

> 103(a)(3)(F); provided, that for the purposes of this chapter, such district shall only extend inland for three (3) miles from the nearest bank of the Tennessee River.

Tenn. Code Ann. § 57-4-102(33) (Supp. 2009). In the instant scenario, the county, but not the municipality, elected to become a TRRD. A club, hotel, motel or restaurant located within such a municipality and county—and within three miles of the Tennessee River—may sell alcohol because it is located within "a jurisdiction that has elected Tennessee River resort district status," that jurisdiction being the county that made the election. *Id*.

Counties and municipalities may establish the hours for the sale of beer by resolution or ordinance. Tenn. Code Ann. § 57-5-301(b)(1), (3), and (4) (Supp. 2009). However, in some instances the hours for the sale of beer are by statute conformed to the hours of sale set forth in the ABC's rules and regulations.

> In any county ***in which an incorporated municipality has authorized the sale of liquor by the drink***, as provided for in chapter 4 of this title, the hours for the sale of beer as defined in § 57-6-102, in that part of the county outside of incorporated municipalities and in all of its municipalities which have authorized the sale of liquor by the drink, shall be the same as the hours authorized by the rules and regulations promulgated by the alcoholic beverage commission for establishments selling liquor by the drink. . . . This subdivision (b)(5) shall not apply to counties and municipalities that have legalized the sale of liquor by the drink by a county-wide referendum.

Tenn. Code Ann. § 57-5-301(b)(5) (Supp. 2009) (emphasis added). Under the instant facts, the county, not the municipality, authorized the sale of liquor by the drink. Accordingly, the ABC's rules and regulations would not control the hours for the sale of beer in such a municipality under Tenn. Code Ann. § 57-5-301(b)(5).

Nor do other statutes provide such control to the ABC. Tenn. Code Ann. § 57-3-406(e) (Supp. 2009), which limits the hours for sale of "alcoholic beverages" by retailers, falls within the ABC's jurisdiction. Tenn. Code Ann. § 57-1-201(a) (Supp. 2009). However, as defined, "alcoholic beverage" does not include beer,[2] and chapter 3 of title 57 does not apply to the sale of beer. Tenn. Code Ann. §§ 57-3-101(a)(1)(A) and -103(a)(1) (Supp. 2009). Also, the limitation is not based on the ABC's rules but instead is explicitly set forth in the statute. Tenn. Code Ann. § 57-3-406(e) (Supp. 2009). Accordingly, the ABC and its rules would not control the hours for the sale of beer in the above-described municipality under section 57-3-406(e).

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[2] "Alcoholic beverage" does not include "beer [that] contains an alcoholic content of five percent (5%) by weight or less." Tenn. Code Ann. § 57-3-101(a)(1)(A) (Supp. 2009). This exclusion neatly coincides with the definition of "beer" as "beer, ale or other malt beverages, or any other beverages having an alcoholic content of not more than five percent (5%) by weight, except wine." Tenn. Code Ann. § 57-5-101(b) (Supp. 2009).

Pursuant to Tenn. Code Ann. § 57-4-201(a)(1) (2002), the ABC is authorized to administer Tenn. Code Ann. § 57-4-203(d)(1) (Supp. 2009), which limits the sale of "alcoholic beverages, and/or malt beverages, and/or wine" by hotels, clubs, motels, restaurants, and other establishments. These establishments may not sell or give away such beverages between 3:00 a.m. and 8:00 a.m. on weekdays or 3:00 a.m. and 12:00 noon on Sundays. Tenn. Code Ann. § 57-4-203(d)(1) (Supp. 2009). As used in this section, the term "malt beverages" means beer.[3] Thus, these establishments may not sell beer between the hours set forth in section 57-4-203(d)(1) (Supp. 2009). However, the ABC has the power to "extend the hours of sale in the jurisdictions which have approved the sale of liquor by the drink by referendum." Tenn. Code Ann. § 57-4-203(d)(5) (Supp. 2009). As used in this statute, the term "jurisdictions" means municipalities and metropolitan governments, but not counties.[4] Even if "jurisdictions" did include counties, with regard to the instant facts, the ABC would not be able to extend the hours for sale of beer in the TRRD because the municipality did not approve liquor by the drink and the county's approval was "by adopting a resolution or ordinance approved by a two-thirds (2/3) vote of the legislative body of the jurisdiction" and not by referendum. Tenn. Code Ann. § 67-6-103(a)(3)(F)(ii)(a) (Supp. 2009). Accordingly, the limitation is stated in the statute and is not controlled by the ABC and its rules.

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[3] There is no definition for "malt beverages" in Tenn. Code Ann. § 57-4-102 (Supp. 2009). However, as used in Tenn. Code Ann. § 57-4-203(d)(1) (Supp. 2009), "malt beverages" means beer because it would be superfluous for it to include alcoholic beverages or wine. Also, "beer" is defined as "beer, ale or other malt beverages, or any other beverages having an alcoholic content of not more than five percent (5%) by weight, except wine." Tenn. Code Ann. § 57-5-101(b) (Supp. 2009). Thus, "beer" includes malt beverages with five percent (5%) or less alcoholic content.

[4] Permitting municipalities and metropolitan governments that have approved liquor by the drink by referendum to opt out of and back into subsection (d)(5) infers that that subsection applies only to those municipalities and metropolitan governments to begin with, and not to counties. Tenn. Code Ann. § 57-4-203(d)(5) (Supp. 2009). Also, reading this subsection as not applicable to counties that have approved liquor by the drink by referendum coincides with Tenn. Code Ann. § 57-5-301(b)(5) (Supp. 2009). In both instances, the ABC does not control the hours for sale of beer because liquor by the drink was approved by county-wide referendum.

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