

STATE OF TENNESSEE

OFFICE OF THE
ATTORNEY GENERAL
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October 3, 2012

Opinion No. 12-93

Manufacture of Intoxicating Liquors in Hamilton County

QUESTION

May Hamilton County permit the manufacture of intoxicating liquors or intoxicating drinks within its boundaries by means of a resolution adopted by its Board of Commissioners pursuant to Tenn. Code Ann. § 57-2-103(d) in lieu of seeking to obtain such authorization by means of a referendum as set forth in Tenn. Code Ann. §§ 57-2-103(a)-(c)?

OPINION

No. Tenn. Code Ann. § 57-2-103(d) authorizes county legislative bodies to adopt resolutions authorizing the manufacture of intoxicating liquors and intoxicating drinks in counties that (1) have approved both retail package sales and liquor by the drink or are included in the Tennessee River resort district as defined by Tenn. Code Ann. § 57-4-102 and (2) meet the population requirements set forth in Tenn. Code Ann. § 57-2-103(d)(1)(B). Hamilton County does not come within these statutory requirements and, therefore, the county must follow the petition and referendum procedure set forth in Tenn. Code Ann. § 57-2-103(a)-(c) before the manufacture of intoxicating liquors and intoxicating drinks may be permitted in the county.

ANALYSIS

Tenn. Code Ann. § 57-2-103 generally governs the manufacture of intoxicating liquors in Tennessee. Under that statute, such manufacture is permitted in any county where the majority of voters have, by referendum, approved a resolution permitting it within the county. *See State ex rel. Motlow v. State*, 173 Tenn. 81, 89-90, 114 S.W.2d 800, 803-04 (1938). Tenn. Code Ann. § 57-2-103(a)-(c) sets forth the procedure that is followed to determine whether such a referendum may be presented to the voters. If 10% of the qualified voters in a county sign a petition to present the question whether the manufacture of liquor will be permitted within a county, the county commission must call an election on the question. Tenn. Code Ann. § 57-2-103(a)-(b). If a majority of the votes are cast in favor of the question, then the manufacture of liquor is permitted within that county. Tenn. Code Ann. § 57-2-103(c).

Prior to 2009, a county that chose to exercise its local option to permit or prohibit the manufacture of intoxicating liquors within its borders could do so only by referendum under

Tenn. Code Ann. § 57-2-103.¹ In 2009, the General Assembly enacted Public Chapter 524, which added subsection (d) to Tenn. Code Ann. § 57-2-103. Subsection (d) provides in relevant part:

(d)(1)(A) Notwithstanding subsections (a)-(c), it shall be lawful to manufacture intoxicating liquors or intoxicating drinks, or both, within the boundaries of those counties included in subdivision (d)(1)(B), if both retail package sales and liquor-by-the-drink have been approved through voter referendum within the county or if the county is included in the Tennessee River resort district as defined in § 57-4-102 and retail package sales have been approved through voter referendum within the county.

(B) This subsection (d) shall apply in any county having a population, according to the 2000 federal census or any subsequent federal census, of:

<u>not less than</u>	<u>nor more than</u>
7,600	7,700
11,369	11,450
14,300	14,400
17,700	17,775
17,900	18,000
25,575	25,650
26,700	26,800
27,100	27,200
27,700	27,800
29,400	29,450
31,100	31,200
33,525	33,600
35,900	36,000
37,200	37,300
39,200	39,300
43,100	43,200
44,200	44,300
46,800	46,900
48,125	48,200
51,200	51,300
51,900	52,000
53,500	53,600
54,400	54,500
62,900	63,000
71,100	71,200

¹ Chapter 3 of Title 57, specifically Tenn. Code Ann. § 57-3-106, also contains provisions related to local option elections in counties and municipalities to permit or forbid the manufacture, receipt, sale, storage, transportation, distribution and possession of intoxicating liquors. However, pursuant to Tenn. Code Ann. § 57-3-103(a)(1), those provisions do not affect Title 57, Chapter 2 which exclusively governs when a county may authorize the manufacture of intoxicating liquors or drinks.

71,300	71,400
91,800	91,900
105,800	105,900
107,100	107,200
126,600	126,700
134,700	134,800
153,000	153,100
182,000	182,100
382,000	382,100

and in any county having a population of more than five hundred thousand (500,000) according to the 2000 federal census or any subsequent federal census.

Tenn. Code Ann. § 57-2-103 (d)(1).²

In order for subsection (d)(1)(A) to apply to a particular county, the county population must fall within one of the population classifications contained in subsection (d)(1)(B). Hamilton County's total population, according to the 2000 Federal Census was 307,896 and the population according to the 2010 Federal Census was 336,463, neither of which falls within the

² "Tennessee River resort district" is defined by Tenn. Code Ann. § 57-4-102(35) as:

a club, hotel, motel, restaurant or limited service restaurant located within a jurisdiction that has elected Tennessee River resort district status pursuant to the provisions of § 67-6-103(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. § 67-6-103(a)(3)(F) provides:

(F)(i) A county ranking in the first quartile of county economic distress in the United States for fiscal year 2006, as determined pursuant to subdivision (a)(3)(F)(v) and bordering on, or crossed by, the Tennessee River, may elect to be a "Tennessee River resort district" for purposes of this chapter. A municipality within such county and located within three (3) miles of the nearest bank of the Tennessee River, may also elect to be a "Tennessee River resort district" for purposes of this chapter. . . This subdivision (a)(3)(F)(i) shall also apply in any county that has a population of less than ten thousand (10,000), according to the 2000 federal census or any subsequent federal census, and borders the Tennessee River and a county included within the Tennessee River resort district. This subdivision (a)(3)(F)(i) shall also apply in any county having a population of not less than twelve thousand three hundred sixty-nine (12,369) nor more than twelve thousand four hundred fifty (12,450) and in any county having a population of not less than seventeen thousand nine hundred (17,900) nor more than eighteen thousand (18,000), all according to the 2000 federal census or any subsequent federal census, and that border the Tennessee River;

Tenn. Code Ann. § 67-6-103. According to the map published by the Department of Economic and Community Development found at http://www.tn.gov/ecd/graphics/Economically_Distressed_Counties_2012.png (last viewed September 17, 2012), Hamilton County does not qualify as an economically distressed county, nor does it meet the population parameters in subsection (F)(i), therefore Hamilton County does not qualify as a Tennessee River resort district. Furthermore, Hamilton County has never qualified for or elected into Tennessee River resort district status according to information this Office obtained from the Department of Revenue.

population groups that are set forth in that subsection. Therefore, Tenn. Code Ann. § 57-2-103(d) does not apply to Hamilton County, and the county is limited to the referendum process set forth in Tenn. Code Ann. §§ 57-2-103(a)-(c) in order to exercise its local option to permit the manufacture of intoxicating liquors within its borders.

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