STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

January 31, 2018

Opinion No. 18-03

Reporting Changes of Control of Corporations that Own and Operate Licensed Distilleries

Question 1

What statutory or other legal authority exists to authorize the Alcoholic Beverage Commission (the "ABC") to require the reporting of the names of the current corporate shareholders and officers of a distillery to the ABC on a form designated by the ABC?

Opinion 1

The ABC has the power, by necessary implication, to require distillers of alcoholic beverages to report the names of the current corporate shareholders and officers on a form designated by the ABC.

Question 2

Under current law, in the event of any change in the stock ownership of a corporation that operates a distillery, what percentage change of interest is required, if any, for the corporation to be required to report to the ABC the names of the corporate shareholders and officers of the distillery?

Opinion 2

For purposes of reporting to the ABC a change in the stock ownership of a corporation that operates a distillery, there is no provision of law that expressly establishes a specific threshold percentage change of interest that must be met before the change is required to be reported.

Question 3

Under current law, what provision exists, if any, to exempt any types of distilleries from reporting to the ABC the names of corporate shareholders and officers?

Opinion 3

There is no provision of current law that expressly exempts a distiller from such reporting requirements.

Question 4

If the answer to Question 3 is that there is such an exemption, does such exemption violate the Equal Protection Clause or other constitutional provision?

Opinion 4

See Opinion 3 above.

ANALYSIS

The ABC, as an agency of state government, is a creature of statute. *McFarland v. Pemberton*, 530 S.W.3d 76, 91 (Tenn. 2017). It therefore has only those powers that are expressly granted by statute or that arise by necessary implication to enable it to carry out its statutory mandate. *Id*. The source of any implied powers must still be found in the language of the statute itself. *Wayne County v. Tenn. Solid Waste Disposal Control Bd.*, 756 S.W.2d 274, 282 (Tenn. Ct. App. 1988).

There is no statutory provision that expressly gives the ABC the authority to require corporations that own and operate a licensed distillery to report the names of their stockholders and officers. But the ABC has the authority by necessary implication arising from the powers and duties that have been expressly conferred on the agency by statute.

Tennessee Code Ann. § 57-3-104 gives the ABC the express power to enforce all of the provisions of chapter 3, title 57, including the statutory requirements for the issuance and renewal of distiller's licenses. Those requirements include, but are not limited to, the following: Tenn. Code Ann. § 4-58-103(1), which requires that each applicant for a state benefit be a citizen of the United States or lawfully present in the United States; Tenn. Code Ann. § 57-3-202(b), which requires all shareholders of licensed distilleries to also be citizens of the United States; Tenn. Code Ann. § 57-3-210(d), which provides that no distiller's license shall be issued to any person who, within 10 years preceding application has been convicted of any offense under Title 57 or other similar state or federal law; Tenn. Code Ann. § 57-3-210(e), which prohibits distilleries from having any interest in a wholesale or retail business that is licensed to sell alcoholic beverages, and Tenn. Code Ann. § 57-3-210(i), which prohibits distillers from employing convicted felons. In order to enforce each of these provisions, the ABC must know and, therefore, impliedly has the authority to obtain, the identity of these persons from the applicant/licensee.

A distiller must renew its license every 12 months by submitting a renewal application to the ABC. Tenn. Code Ann. §§ 57-3-213(a)-(c). Deciding whether an applicant is qualified for renewal of a license necessarily requires the ABC to determine whether the applicant still satisfies all of the statutory requirements for retaining the license. This statutory duty of the ABC, therefore, also implies the authority to request and obtain the identity of corporate shareholders and officers.

The ABC also has the express authority to "[p]rescribe all forms of applications and licenses and tax stamps, and of all reports and all other papers and documents required to be used under or in the enforcement of this chapter." Tenn. Code Ann. § 57-3-104(c)(5). This gives the

ABC express authority to require reporting of ownership identity and changes in ownership interests on any form it prescribes for that purpose.

For purposes of reporting to the ABC a change in the stock ownership of a corporation that operates a distillery, there is no provision of law that expressly establishes a threshold percentage change of interest that must be met before the change is required to be reported.

Likewise, no provision of current state law exempts any type of distillery from reporting the names of corporate shareholders and officers to the ABC.

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