STATE OF TENNESSEE
OFFICE OF THE ATTORNEY GENERAL

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Opinion No. 18-35

Exclusive Sponsorship of Events by Alcohol Industry Members

Question

Under regulations issued by the Tennessee Alcoholic Beverage Commission, may an alcoholic beverage manufacturer or other industry member pay to sponsor an event in exchange for an agreement that the sponsor's product will be served exclusively at the event?

Opinion

The legality of any such exclusive sponsorship agreement would depend on the specific facts of the agreement and the status of the parties to the agreement, including whether the parties are licensed wholesalers or retailers and whether the agreement involves alcoholic beverages or beer.

ANALYSIS

Tennessee has adopted a three-tiered system to regulate the manufacture, distribution, and sale of alcoholic beverages. See Tenn. Code Ann. §§ 57-3-202, -203, and -204 (establishing licensing requirements for manufacturers or distillers, wholesalers, and retailers, respectively); Tenn. Att'y Gen. Op. 14-61 (June 17, 2014). To maintain separation among those three tiers, Tennessee, like the federal government and many states, prohibits so-called "tied-house" arrangements pursuant to which manufacturers have a financial interest in retailers, or retailers enter into exclusive agreements with manufacturers or wholesalers. See Tenn. Att'y Gen. Op. 82-364 (July 27, 1982); see also 27 U.S.C. § 205(a), (b); see also Nat'l Distrib. Co. v. U.S. Treasury Dep't, 626 F.2d 997, 1008-10 (D.C. Cir. 1980) (describing the legislative history of the federal law banning tied-house arrangements).

Tennessee Comp. R. & Regs. 0100-06-.02(3), issued by the Tennessee Alcoholic Beverage Commission, generally prohibits any alcoholic beverage "industry member," which includes manufacturers and wholesalers, or its representative from providing anything of value to retailers, and prohibits retailers, in turn, from accepting anything of value from industry members or their representatives. In addition, Tenn. Comp. R. & Regs. 0100-06-.02(10)(c) prohibits exclusive relationships between industry members or their representatives and retailers:

> An industry member, or any representative thereof – e.g. third-party marketing entities [–] may not require, nor may a retailer request, offer and/or accept an exclusive arrangement wherein the retailer agrees, in exchange for money, services,

and/or any other thing of value from the industry member, to offer for sale the industry member's product exclusively to the exclusion of other related products.

For the purposes of these regulations, "industry member" means "any person engaged in business as a manufacturer, distiller, rectifier, blender, non-resident seller, or other producer, or as an importer, or wholesaler, of distilled spirits, or wine, or as a bottler, or warehousemen and bottler, of distilled spirits, licensed in the state of Tennessee." Tenn. Comp. R. & Regs. 0100-06-.01(5). And "retailer" means "any person engaged in the sale of distilled spirits, wine, or alcoholic beverages to consumers, licensed in the state of Tennessee, whether such sales are made for consumption on or off the premises where sold." Tenn. Comp. R. & Regs. 0100-06-.01(8). These definitions, as well as the general definition of "alcoholic beverage," encompass manufacturers, wholesalers, and retailers only of wine and spirits, not beer. *See* Tenn. Code Ann. § 57-3-101(a)(1)(A) (defining "alcoholic beverage"); *id.* § 57-5-101(b) (defining "beer").

The validity of any exclusive sponsorship agreement thus depends on the specific facts of the agreement, including the nature of the parties to it. An exclusive sponsorship agreement between an industry member or its representative and a retailer would violate the regulations unless it fits within an applicable exception. If, however, one party to the agreement was not a licensed industry member or a licensed retailer—or a representative or agent of either—then the regulations would not prohibit the arrangement. In addition, such arrangements may be permissible when beer, as opposed to wine and spirits, is the only beverage at issue, depending on other applicable state and local laws and regulations governing beer distribution and sale. *See, e.g.*, Tenn. Code Ann. § 57-5-101(a)(2), (3) (prohibiting a particular type of tied-house arrangement in the beer industry). Other types of marketing or sponsorship arrangements that do not require exclusivity may also be possible as long as they comply with the applicable statutes and regulations. However, due to the limitations on industry members' or their representatives' providing anything of value to retailers, such permissible arrangements would be extremely rare.

In short, the validity of any exclusive sponsorship arrangement under the applicable laws and regulations would depend on the specific facts of the agreement, including the nature of the entities that are party to the agreement and the specific beverages at issue.

HERBERT H. SLATERY III
Attorney General and Reporter

ANDRÉE SOPHIA BLUMSTEIN
Solicitor General

JONATHAN DAVID SHAUB
Assistant Solicitor General

Requested by:

The Honorable Joe Pitts
State Representative
670 Cordell Hull Building
Nashville, TN 37243