

**STATE OF TENNESSEE**

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Opinion No. 05-143

Construction of Chapter 262, Public Acts of 2005

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**QUESTION**

Whether Public Chapter 262 permits a municipality's governing body, more than thirty (30) days after the effective date of the Act, to call for a referendum election concerning the sale of alcoholic beverages?

**OPINION**

No. The Act requires that the municipality's governing body act no later than the thirtieth day after the Act takes effect.

**ANALYSIS**

This opinion interprets Public Chapter 262, which was enacted by the General Assembly this past session. The Act, which amends Tenn. Code Ann. § 57-4-103 by adding a new subsection, provides as follows:

(4) If any municipality located in any county having a population of not less than one hundred five thousand eight hundred (105,800) nor more than one hundred five thousand nine hundred (105,900), according to the 2000 federal census or any subsequent federal census, has authorized the sale of alcoholic beverages for consumption on the premises in a referendum in the manner prescribed by § 57-3-106, then any other municipality located within the boundaries of such county may conduct a referendum to authorize the sale of alcoholic beverages for consumption on the premises within the corporate boundaries of such municipality notwithstanding the population requirements of § 57-3-106(b)(1) or § 57-3-101(a)(11); notwithstanding the provisions of § 57-3-106(c) requiring such elections to be held at the next regular election of the municipality, *such a municipality's governing body shall be permitted to call and set the date for such a referendum within thirty (30) days of the date this act takes effect*; provided that the date set shall allow sufficient time for the collection of signatures and the

filing of the petition as required pursuant to § 57-3-106(c); and provided further that all costs associated with such election shall be paid for by the calling municipality.

(Emphasis added).

Public Chapter 262 is an exception to the general law with respect to when referendum elections authorizing the sale of alcoholic beverages for consumption on the premises may be held, and who may call such elections. The general law currently provides that such elections

shall be called and held as elections on questions by the *county election commission at the next regular election of the county or municipality*, as the case may be, upon receipt of a petition signed by residents of the county or municipality, as the case may be, to a number amounting to ten percent (10%) or more of the votes cast in the county or municipality, as the case may be, for governor of the state of Tennessee at the then last preceding gubernatorial election, requesting the holding of such election. Except that, no election under this chapter may be placed on the same ballot or conducted on the same day of a primary election.

Tenn. Code Ann. § 57-3-106(c) (emphasis added). Under Public Chapter 262, the governing body of a municipality located in a county that meets the other requirements of the Act is authorized to call and set the date for the referendum election, rather than the county election commission. Further, unlike the county election commission, the municipality's governing body is not required to wait for the receipt of a petition requesting a referendum election before calling and setting the date of such election. Finally, the municipality's governing body is not required to set the date for the referendum election at the next regular election of the municipality. Instead, it simply must set a date far enough in advance that will allow sufficient time "for the collection of signatures and the filing of the petition as required pursuant to § 57-3-106(c)."

The opinion request asks when a municipality's governing body must call for the referendum election under Public Chapter 262. One of the most basic principles of statutory construction requires the interpreter to ascertain and give effect to the intention and purpose of the legislature. That intent and purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, eschewing any forced or subtle constructions that might artificially limit or extend the meaning of the language. *See, e.g., Tuggle v. Allright Parking Systems, Inc.*, 922 S.W.2d 105, 107 (Tenn. 1996); *National Gas Distributors, Inc. v. State*, 804 S.W.2d 66, 67 (Tenn. 1991); *Worrall v. Kroger Co.*, 545 S.W.2d 736, 738 (Tenn. 1977). Where the statutory language is plain, clear, and unambiguous, one must avoid any interpretation or construction that departs from the words of the statute, *Tuggle v. Allright Parking Systems, Inc.*, 922 S.W.2d at 107, and without applying other statutory rules of construction. *See Kradel v. Piper Indus.*, 60 S.W.3d 744, 749 (Tenn. 2001); *Gleaves v. Checker Cab Transit Corp.*, 15 S.W.3d 799, 802-803 (Tenn. 2000) (courts are "not at

liberty to depart from the words of [a] statute . . . [and must] presume that the legislature says in a statute what it means and means in a statute what it says there”).

Public Chapter 262 provides that, if the other requirements are met, “such a municipality’s governing body shall be permitted to call and set the date for such a referendum within thirty (30) days of the date this act takes effect.” The plain language of the Act requires the municipality’s governing body to act “within thirty days of the date this act takes effect.” The term “within” is ordinarily defined as “inside the limits or extent of in time, degree, or distance.” *The American Heritage Dictionary* (New College Ed.). Based upon this plain and unambiguous language, it is our opinion that Public Chapter 262 requires that the municipality’s governing body act no later than the thirtieth day after the Act takes effect.

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