



July 1, 2008

ADVISORY OPINION 08-01

Interpretation of T.C.A. § 3-6-305 with respect to an employer of a lobbyist providing commemorative bottles of wine and glasses to members of the Legislature in connection with an all-legislative and in-state event.

INTRODUCTION

The following Advisory Opinion is in response to a request from Ms. Susan Ritter, Executive Vice President of the Home Builders Association of Tennessee (“Association”).

QUESTION

Does the gift of a commemorative bottle of wine and wine glasses at an in-state event violate the Ethics Reform Act (the “Act”), so long as the total per person cost of the event is below fifty-one dollars (\$51.00)?¹

ANSWER

No. Under Tenn. Code Ann. § 3-6-305(b)(8), providing a commemorative bottle of wine and wine glasses of nominal value in connection with an in-state event does not violate the Ethics Reform Act so long as the aggregate cost of the event does not exceed fifty-one dollars (\$51.00) per person and the subsection’s other statutory requirements are met.

FACTS

The Association is an employer of a lobbyist (“Employer.”) The Association is planning an Open House to showcase its new location and offices. The Association would like to invite the entire Legislature to the Open House, as well as approximately one hundred and fifty (150) Association members and other guests, such as subcontractors and home product suppliers. The estimated cost of the Open House is nine to ten thousand dollars (\$9,000 - \$10,000), including catering, entertainment, commemorative bottles of wine, and special souvenir wine glasses. According to the opinion request and additional information provided by the Association, each bottle of wine cost the Association five dollars (\$5.00). Each label cost the Association seven dollars and fifty cents (\$7.50). The label is a stick-on type with a picture of the Association’s new office and the date of the grand opening. Each wine glass costs the Association less than two dollars (\$2.00). The total per person cost for the event is less than fifty-one dollars (\$51.00).

¹ Pursuant to T.C.A. § 3-6-305 (8)-(10), the Commission adjusted the gift limit to fifty-one dollars (\$51.00) to compensate for a 2.8 percent rise in the Consumer Price Index.

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The commemorative wine and wine glasses will be placed on a table, and all guests will be invited to take a bottle of wine and wine glasses, if they so choose, until the supply is exhausted. The wine is not intended for consumption at the Open House.

ANALYSIS

Tenn. Code Ann. § 3-6-305(a)(1) prohibits employers from providing “gifts” to officials in the legislative branch. “[G]ift” is defined as “payment, honorarium, subscription, loan, advance, forbearance, rendering or deposit of money or services, unless consideration of equal or greater value is received.” Tenn. Code Ann. § 3-6-301(11). The wine, wine bottle, and wine glasses come within the definition of “gift.” Thus the Association may not give these items to members of the General Assembly unless an exception to the gift ban applies. Exceptions to the gift ban are found in Tenn. Code Ann. § 3-6-305(b).

Tenn. Code Ann. §3-6-305(b)(8) provides an exception for “entertainment, food, refreshments, meals, beverages, or health screenings provided in connection with an in-state event to which invitations are extended to the entire membership of the general assembly.” In order to fall under this exception to the gift ban, “a copy of the invitation must be delivered to the ethics commission and to each member of the general assembly at least seven (7) days in advance of the event by the employer or lobbyist paying for the event.” In addition, “within thirty (30) days following the event, the employer or lobbyist shall electronically report to the commission the total aggregate cost paid for the event, as well as the per person contractual cost for the event or the per person cost for the event based on the number of persons invited.” Finally, the cost of the event cannot exceed exceed fifty-one dollars (\$51.00) per person per day, excluding sales tax and gratuity.

The Association may sponsor the Open House as an all legislative event, under part (8) above, provided that the value of any entertainment, food, refreshments, or beverages that are provided by the Association does not exceed fifty-one dollars (\$51.00) per person per day, and the other statutory requirements of subsection eight (8) are followed. According to the Association, the entire per-person cost of the event, including a bottle of wine and a pair of glasses for each person, comes to less than fifty-one dollars (\$51.00). Thus, the fifty-one dollar (\$51.00) limitation is not an issue.

What is at issue is whether a commemorative bottle of wine and wine glasses can be considered to be “beverages” or “refreshments” “provided in connection with an in-state event” pursuant to Tenn. Code Ann. § 3-6-305(b)(8). In view of the minimal value of the bottle and the glasses, one might assume the provision of such items would not contravene the Legislature’s intent in establishing restrictions on gifts. Ethics statutes in some states explicitly provide a “de minimis” exception for items of negligible value.² The Tennessee Ethics Reform Act, however, contains no such exception.

² *E.g.*, N.Y. LEGIS. LAW § 1-c (2008).

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Statutory interpretation in Tennessee does not normally start with a general examination of the purpose of the legislation. Instead, “[t]he legislative intent and purpose are to be ascertained primarily from the natural and ordinary meaning of the statutory language.”³ The natural and ordinary meaning of the words “beverage” and “refreshment” would include the wine contained in the bottle, but would not include the bottle itself or the glasses. Thus, if the literal language of the statute is applied, it appears that the wine would be within the exception, but not the containers necessary to carry and to drink the wine. This conclusion would apply not just to commemorative bottles and glasses, but to all containers for dispensing and drinking beverages

It is well settled that a literal interpretation of a statute should be avoided if it leads to an absurd result.

Statutes must be construed, if possible, so as to make them sensible, and to effect and carry out the purposes for which they are enacted. It is not to be presumed that the lawmakers will pass a defective or insensible act, or one in conflict with the organic law. * * * The legislative intent will prevail over the strict letter or literal sense of the language used, and, in order to carry into effect this intent, general terms will be limited, and those that are narrow expanded.

Maxey v. Powers, 117 Tenn. 381, 403-04, 101 S.W. 181 (1907).⁴ Courts must “construe terms reasonably and not in a fashion which will lead to an absurd result.” In short, courts must construe statutes “with the saving grace of common sense.” *State ex rel. Maner v. Leech*, 588 S.W.2d 534, 540 (Tenn. 1979)(citations omitted).⁵

It would be absurd to conclude that the Association could provide wine at an event, but could not provide bottles and glasses for the drinking of wine.⁶ Common sense dictates that the Legislature, in creating an exception for beverages and refreshments provided in connection with an event, intended to include such beverage containers as may be necessary to transport beverages to the event and to dispense beverages to attendees. Despite the lack of a specific exception for these items, a reasonable person would have to conclude that providing these items would not violate the purpose and intent of the Act. To avoid an absurd result, the terms “beverage” or “refreshment” and “provided in connection with” must be construed, under these circumstances, to include such containers as are incidental to providing the items in connection with the event.

This does not end the analysis. The wine is not intended to be consumed at the event. Therefore, the next question is whether a beverage or refreshment “provided in connection with”

³ *State v. Blackstock*, 19 S.W.3d 200, 210 (Tenn. 2000).

⁴ *Maxey* holds that a statute cannot be interpreted to require the election of officers whose offices would cease to exist before the day fixed by law for them to qualify and be inducted into office.

⁵ *Maner* discusses the principle that a court must presume the legislature intended a statute to be constitutional.

⁶ *Wachovia Bank of North Carolina, N.A. v. Johnson*, 26 S.W.3d 621, 624 (Tenn. Ct. App. 2000)(courts should presume the legislature did not intend an absurd result).
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an event must be consumed at the event in order to be within the exception. The specific items enumerated in the exception, “entertainment, food, refreshments, meals, beverages, or health screenings” are all items that either must or may be consumed or experienced at the event. On the other hand, the plain and ordinary meaning of the words “provided in connection with” does not establish a requirement that the items must be consumed at the event. If the Legislature meant to say “consumed or experienced in connection with,” it could have done so.

The Commission, therefore, concludes that the commemorative bottles of wine and wine glasses to be provided in connection with the Association’s open house are within the terms of the exception so long as the other provisions of Tenn. Code Ann. § 3-6-305(b)(8) are met.

Dianne Ferrell Neal, Acting Chair
R. Larry Brown
Thomas J. Garland
Benjamin S. Purser, Jr.,
Commissioners

Adopted: March 25, 2008, As Amended June 26, 2008.

I reaffirm my vote with respect to the result and outcome of the majority opinion in this matter. I do concur in the appended statement by Commissioner Knight regarding the appropriate statutory exception in T.C.A. 3-6-305(b).

Dianne Ferrell Neal, Acting Chair

CONCURRENCE

Linda Whitlow Knight, Commissioner, concurs in the result.

Commissioner Knight agrees that the bottles of wine are "beverages" or "refreshments" within the exception of Tenn. Code Ann. § 3-6-305(b)(8).

However, Commissioner Knight would not except the wine glasses under Tenn. Code Ann. § 3-6-305(b)(8). In her view, the wine and glasses are separate gifts. The glasses do not come within Tenn. Code Ann. § 3-6-305(b)(8) just because the bottles of wine do. The Association could give a bottle of wine but not glasses. The Association could provide glasses in order for guests to drink the wine at the event, without such glasses being commemorative gifts intended to be taken away as souvenirs. It is not absurd to think that the Association could provide bottles of wine without also giving special glasses. Conversely, the Association could give special glasses (or similar items, such as commemorative mugs or plates) without also giving the commemorative food or beverage. Commissioner Knight would not include glasses, mugs, plates or other utensils or containers within the terms “entertainment, food, refreshments, meals, beverages, or health screenings.”

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The glasses do not fall into the exception of Tenn. Code Ann. § 3-6-305(b)(4) as “[s]ample merchandise, promotional items, and appreciation tokens, if such merchandise, items and tokens are routinely given to customers, suppliers or potential customers or suppliers in the ordinary course of business” because they are commemorative, limited in number, and suitable for this specific occasion. By definition, specialty items would not routinely be given in the ordinary course of business.

Instead, Commissioner Knight would find that the wine glasses, as well as the bottles of wine, are within the exception provided by Tenn. Code Ann. § 3-6-305(b)(6). They are of the same type of “opportunities and benefits made available to all members of an appropriate class of the general public” as the examples listed in Tenn. Code Ann. § 3-6-305(b)(6)(A), (B) and (C).

Thus, the bottles of wine are covered by two exceptions, Tenn. Code Ann. §§ 3-6-305(b)(6) and 3-6-305(b)(8); and the glasses are covered by one exception, Tenn. Code Ann. § 3-6-305(b)(6).