



From: Melissa Ashburn, MTAS Legal Consultant
Re: Beer sale hours (if expanded) survive adoption of liquor by the drink
Date: March 2022

Good afternoon,

Your question about hours for beer sales and the impact approval of liquor by the drink has on those hours is different from the usual inquiries I get on the topic, as most cities want to limit the hours for beer sales rather than expand them. You inform me the city adopted an ordinance in 2018 approving of 24-hour beer sales for on premises consumption.

This is the statute triggered when a city approves of liquor by the drink sales:

(b)(5)(A) In any county in which an incorporated municipality has authorized the sale of liquor by the drink, as provided for in chapter 4 of this title, the hours for the sale of beer as defined in § 57-6-102, in that part of the county outside of incorporated municipalities and in all of its municipalities which have authorized the sale of liquor by the drink, shall be the same as the hours authorized by the rules and regulations promulgated by the alcoholic beverage commission for establishments selling liquor by the drink; provided, however, that the county legislative body of any such county and the governing body of each municipality within the county which has authorized the sale of liquor by the drink shall have the authority to extend the hours for the sale of beer as defined in § 57-6-102, within the territorial jurisdiction of each governing body. This subdivision (b)(5)(A) shall not apply to counties and municipalities that have legalized the sale of liquor by the drink by a county-wide referendum.

Tenn. Code Ann. § 57-5-301 (West)

T.C.A. § 57-5-301(b)(5) applies to all beer sales so usually the hours for the sale of beer in the city are the same hours set by the Alcoholic Beverage Commission for liquor by the drink. With the passage of the liquor by the drink referendum, the Alcoholic Beverage Commission by regulation sets the minimum hours when the sale of beer must be permitted within the town. This statute prevents cities from shortening the hours for sale of beer but does not prevent cities from expanding hours for beer sales.

These are the hours set by the Alcoholic Beverage Commission:

(2) Consumption on Licensed Premises.

Except as provided for in 0100-01-.08 below, no licensee shall permit alcoholic or malt beverages to be consumed and/or sold on the licensed premises between the hours of 3:00 a.m. and 8:00 a.m. on Monday through Saturday or between the hours of 3:00 a.m. and 10:00 a.m. on Sunday unless the local jurisdiction has opted out of the expanded hours. If such is the case, then the consumption and/or sale of alcoholic beverages may begin at 12:00 p.m. on Sunday.



Tenn. Comp. R. & Regs. 0100-01-.03 [Note exception in 0100-01-.08 applies to airport sales]

The city ordinance permitting beer sales for 24 hours, expanding on the ABC hours, appears to survive due to this language in T.C.A. § 57-5-301(b)(5)(A): “the governing body of each municipality within the county which has authorized the sale of liquor by the drink shall have the authority to extend the hours for the sale of beer as defined in § 57-6-102, within the territorial jurisdiction of each governing body.”

If the city wants beer permit holders to retain the authority to makes sales at any time without restriction, it appears that portion of the beer ordinance is still in effect.

I hope this is helpful.

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