

December 17, 2015

Town of Centerville Tennessee
Mayor Gary Jacobs
102 East Swan Street
Centerville, Tennessee 37033

VIA ELECTRONIC MAIL

Dear Mayor Jacobs:

Please let this serve as a follow-up to my letter dated October 16, 2015 regarding the adoption of a liquor by the drink privilege tax following the successful passage of a referendum allowing liquor by the drink in Centerville, and the questions you subsequently posed regarding the sale hours of alcohol and beer in the town and in the unincorporated portion of Hickman County. In formulating this response, the assistance of Legal Consultant Elisha Hodge was consulted.

Please be advised that the Tennessee Alcoholic Beverage Commission (ABC) is statutorily empowered to set the hours of sale for the consumption of liquor in establishments holding a state liquor by the drink license, which it has done in Tenn. Comp. R. & Regs. 0100-01-.03(2):

(2) Consumption on Licensed Premises. No licensee shall permit alcoholic or malt beverages to be consumed on the licensed premises between the hours of 3 a.m. and 8 a.m. on Monday through Saturday or between the hours of 3 a.m. and 10 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 noon on Sunday.

Furthermore, T. C. A. § 57-5-113 provides as follows:

§ 57-5-113. Sale of beer; hours

Any establishment that is permitted to sell liquor or wine for on-premises consumption pursuant to chapter 4 of this title shall be allowed to sell beer at any time the establishment is legally authorized to sell liquor or wine; provided, that the establishment has lawfully obtained a beer permit from the appropriate jurisdiction.

Accordingly, an ABC liquor by the drink licensee that also holds a Centerville beer permit is authorized to sell beer at any time that it is legally authorized to sell liquor and wine.

Next we turn to the question of the sale hours for beer by (1) businesses with an on-premises beer permit but without a state liquor by the drink license, and (2) businesses selling beer for off-premises consumption. T.C.A. § 57-5-301(b)(5) provides as follows:

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(1), 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**

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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(1), within the territorial jurisdiction of each governing body. This subdivision shall not apply to counties and municipalities that have legalized the sale of liquor by the drink by a county-wide referendum (my emphasis).

As T.C.A. § 57-5-301(b)(5) universally applies to all beer sales, the hours for the sale of beer in the Town of Centerville for both on-premises and off-premises consumption are the same hours set by the alcoholic beverage commission for liquor by the drink. So with the passage of the liquor by the drink referendum, control has been placed with the alcoholic beverage commission to set the hours when the sale of beer is permissible within the town.

However, the aforementioned statute does grant to the town the authority to extend the hours that beer may be sold. T.C.A. § 57-5-301(b)(5) reads in part as follows:

...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.....

While the hours may be extended, they may not be shortened.

Should beer hours be extended for the on-premises consumption of beer, such extended sales period applies uniformly to all businesses issued an on-premises beer permit by the town – both those with a state liquor by the drink license and those without – no distinction may be made. A related and open question that is currently being researched is whether or not the extended hours must apply uniformly to all beer sales, or if the extended hours may be applied differently based on permit type (on-premises and off-premises). The conclusions of that research will be provided to you under separate cover.

The latest version of the Centerville code of ordinances (1991) available for my reference provides the following in Sec. 3-57(2):

It shall be unlawful for any beer permit holder to:
(2) Make or allow any sale of beer between the hours of 12:00 midnight and 6:00 a.m. during any night of the week; at any time on Sunday; or on election days before and while the polls are lawfully open.

As can be seen, the sales hours for beer in Centerville are extended on Monday through Saturday to provide an earlier starting time (6:00 a.m.) which is permissible. However, the sales hours are shortened with beer sales ending at 12:00 midnight on Monday through Sunday, and with a total Sunday prohibition. As the town is not empowered to shorten the sales hours, those provisions of the ordinance are not enforceable.

Assuming that the above referenced ordinance provision is current, the sale hours for alcohol, wine, and beer in Centerville are as follows:

ABC Liquor Licensee with Beer Permit

	<u>Sale Hours</u>	<u>Product</u>
• <u>Monday – Saturday</u>	6:00 a.m. – 3:00 a.m. 8:00 a.m. – 3:00 a.m.	Beer Liquor and wine
• <u>Sunday</u>	10:00 a.m. – 3:00 a.m.	Liquor, wine, and beer

Centerville Beer Permit Holder Only

• <u>Monday – Saturday</u>	6:00 am – 3:00 am	Beer (on- and off-premises)
• <u>Sunday</u>	10:00 am – 3:00 am	Beer (on- and off-premises)

Hickman County

With respect to your question as it applies to the unincorporated portion of Hickman County, the same T.C.A. § 57-5-301(b)(5) provides guidance.

Since Hickman County has not approved liquor by the drink by means of a county-wide referendum, by state law the hours for the sale of beer automatically become the same as the hours for the sale of liquor by the drink set by the alcoholic beverage commission. Furthermore, the hours of sale apply to businesses that sell beer for on-premises consumption as well as to businesses that sell beer for off-premises consumption. And as with the town, the county commission is authorized to extend – but not shorten – the hours that beer may be sold.

Unlike the open question that is being researched as it applies to the town, it is clear that should the county extend the hours that beer may be sold, the extended hours must apply universally to all beer permit holders. No distinction can be made based on the permit type (on- or off-premises). Opinion No. U-94-050 from the Office of the Attorney General is enclosed that discusses this matter in detail.

As always, the county commission should rely upon the advice and counsel of its own attorney regarding its questions as to the effect of the referendum on the sale hours of beer within the county.

Please let me know if you have further questions regarding this matter.

Very truly yours,



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Municipal Management Consultant

Cc: Elisha Hodge

STATE OF TENNESSEE

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March 21, 1994

OPINION NO. U94-050

Hours for beer sales in a county which includes an incorporated municipality that has passed liquor by the drink

QUESTION

Whether the hours for the sale of beer in a county must be identical with the hours permitted for the sale of liquor by the drink within an incorporated municipality in that county that has adopted liquor by the drink in a city-wide referendum.

OPINION

Yes. Adoption of liquor by the drink by a municipality automatically alters the hours for sale of beer in unincorporated areas of the county wherein that municipality is located. By state law, the hours for beer sales in the county become the same as the hours for the sale of liquor by the drink as set by the alcoholic beverage commission; however, either the city or the county may *extend* the hours for the sale of beer within its jurisdiction beyond those that would otherwise apply.

ANALYSIS

This Office has been presented with this question on several occasions. See Op. Atty. Gen. 85-7 (January 7, 1985), and opinions cited therein. Municipalities have broad authority over regulation of beer and similar beverages. Tenn. Code Ann. § 57-5-108(a) (regulatory power of municipalities). See also Watkins v. Naifeh, 635 S.W.2d 104 (Tenn. 1982); Howard v. Willocks, 525 S.W.2d 132 (Tenn. 1975); Op. Atty. Gen. 83-506 (December 6, 1983); Op. Atty. Gen. U93-91 (August 25, 1993). The authority of counties is substantially less than that of municipalities regarding the regulation of beer sales.

Howard, supra 525 S.W.2d at 135. The General Assembly, however, has made special provisions concerning the coordination of sales of beer with sales of liquor by the drink.

Tenn. Code Ann. § 57-5-301(b)(5) provides, in pertinent part:

In any county in which an incorporated municipality has authorized the sale of liquor by the drink...the hours for the sale of beer as defined in § 57-6-102(1), 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(1), within the territorial jurisdiction of each governing body.

We have noted, in a prior opinion, that the adoption of liquor by the drink by a municipality automatically alters the hours for sale of beer in all parts of the county outside the incorporated municipality and in all municipalities that have approved liquor by the drink. That is, "the hours for sale of beer become the same as those set for the sale of liquor by the drink under Tenn. Code Ann. § 57-4-203(d)." Op. Atty. Gen. 85-7. Of course, as the subsequent statutory language provides, both the county (for its unincorporated areas) and the cities (within their limits) may extend the hours for beer sales beyond the hours set by the alcoholic beverage commission for the sale of liquor by the drink within the state. They may not, however, impose hours that are more restrictive than those set by the state commission.

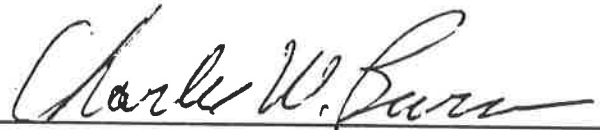
We have previously noted that the laws governing the sale of alcoholic beverages "are part of a regulatory structure [which] should be construed so as to make the system uniform and consistent." Op. Atty. Gen. 85-7, citing Strader v. United American Insurance Company, 218 Tenn. 411, 403 S.W.2d 765 (1966) and Pritchard v. Carter County Motoring Company, 197 Tenn. 222, 270 S.W.2d 642 (1954). It was further observed that Tenn. Code Ann. § 57-5-301(b)(5)

appears to have as one of its purposes increased statewide uniformity in hours for the sale of beer and alcohol, thus aiding effective law enforcement. It has,

of course, been long well established that regulation of various aspects of the liquor and beer industry is a valid exercise of the state's police powers. DeCaro v. City of Collierville, 213 Tenn. 254, 261, 373 S.W.2d 466 (1973).

Obviously, the statute does not create absolute uniformity, since it accords cities and counties the power to extend the hours for beer sales beyond those that would otherwise apply. The statute no doubt does provide for greater uniformity than would exist in its absence. It should be noted that these provisions only apply when liquor by the drink has been approved by a citywide and not a countywide referendum.

In revisiting this issue, it is the opinion of this Office that the conclusion reached in the prior opinion was correct and is, hereby, reaffirmed. The plain language of Tenn. Code Ann. § 57-5-301(b)(5) controls this issue and is determinative of our conclusion.



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