



Email Transmission
2/28/2018

Your message was forwarded to me from the MTAS website. You present an interesting question regarding whether a retailer may give away beer without a permit. The General Assembly, under Tennessee Code Annotated § 57-5-103, has given cities and counties the primary and sole authority to regulate the sale, distribution, manufacture, and storage of beer within the city. With that authority includes the right of the city to issue permits for the sale, distribution, manufacture, and storage of beer in the city. Further, Tennessee Code Annotated § 57-5-103 prohibits any business from engaging in the sale, distribution, manufacture, or storage of beer without a permit. In Tenn. Op. Att’y Gen. No. 88-57, the Tennessee Attorney General opined that “distribution” includes the gift of beer. Therefore, the city has the authority to regulate and permit the giving away or gift of beer. The most recent code sections I have for your city are from 2002, which state the following in pertinent part (emphasis added):

8-207. Permit required for engaging in beer business. It shall be unlawful for any person to sell, store for sale, **distribute for sale**, or manufacture beer without first making application to and obtaining a permit from the beer board.

...

8-209. Beer permits shall be restrictive. All beer permits shall be restrictive as to the type of beer business authorized under them. Separate permits shall be required for selling at retail, storing, **distributing**, and manufacturing.

The municipal code phrasing in 8-207 that provides “sell, store for sale, distribute for sale, or manufacture” do not align with the statute, but regardless, Tennessee Code Annotated § 57-5-103(a)(1) prohibits the distribution of beer without a city permit: “(a)(1) It is unlawful to operate any business engaged in the **sale, distribution, manufacture, or storage** of beer without a permit issued by the county or city where such business is located under the authority herein delegated to counties and cities.”

The only exception to the beer permit requirement for giving away beer is for homemade beer under Tennessee Code Annotated § 57-5-111, and the statutory language limits the amount of beer to 100 gallons for households with one person of legal drinking age and 200 gallons for households with two or more persons of legal drinking age. I do not believe that is the case here, but I wanted you to be aware of that exception.

Unfortunately for the retail location, the use of a restaurant with a beer permit for this purpose would not alleviate the permit issue, as the restaurant likely does not have a beer permit for the retailer’s location.

Thus, I recommend the following for the city’s consideration:

- 1) In order to align the city’s language (and assuming the 2002 code language I have is the most current) with that statutory language, I recommend passing an ordinance to amend municipal code section 8-207 with the following wording: “sale, distribution, manufacture, or storage of beer.”
- 2) If the city would like to allow the gift of beer under a separate permit, the city may also consider amending code section 8-210 to adopt a new class of beer permits to allow for the gift of beer with a permit.

Finally, I recommend that the city discuss this matter with the city attorney, as he is likely best informed to help the city choose the best options for amending the city’s code language.



Please let me know if you have any additional questions.

Thank you,

Stephanie

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