



To: City official
From: Hodge, Elisha, MTAS Legal Consultant
Subject: A person under the age of 21 applying for and holding a beer permit
Date: March 2022

Via Email

Dear city official,

You have asked whether a person under the age of 21 can “apply and hold a beer permit.”

In order to answer your question, the language related to beer permits in the Tennessee Code and in the City’s municipal code must be examined.

Tennessee Code Annotated § 57-5-106 reads:

(a) All incorporated cities, towns and Class B counties in this state are authorized to pass proper ordinances governing the issuance and revocation or suspension of licenses for the storage, sale, manufacture and/or distribution of beer within the corporate limits of the cities and towns and within the general services districts of Class B counties outside the limits of any smaller cities as defined in § 7-1-101 and to provide a board of persons before whom such application shall be made, but the power of such cities, towns and Class B counties to issue licenses shall in no event be greater than the power herein granted to counties, but cities, towns and Class B counties may impose additional restrictions, fixing zones and territories and provide hours of opening and closing and such other rules and regulations as will promote public health, morals and safety as they may by ordinance provide. The ordinance power granted to a municipality by this subsection (a) does not permit a municipality to establish residency requirements for its applicants. The ordinance power granted to a municipality by this section does not permit a municipality to impose training or certification restrictions or requirements on employees of a permittee if those employees possess a server permit issued by the alcoholic beverage commission pursuant to chapter 3, part 7 of this title. (emphasis mine)

While the language above provides municipalities broad authority to adopt ordinances related to the issuance of beer permits, there is no explicit language in the Tennessee Code that establishes the minimum age an applicant must be to apply for or be issued a beer permit. The Tennessee Attorney General was asked a question similar to yours and opined as follows in Tenn. Op. Atty. Gen. No. 87-28:

The Code also does not specifically establish a minimum age for obtaining a permit to sell beer. T.C.A. § 57-5-105 establishes the requirements one must meet in order to obtain a license to sell beer outside the limits of a town or city in a county not governed by a metropolitan government. No age requirement is provided. In addition, it has been held that the county legislative body or the county beer board in such counties may not impose additional requirements. See e.g. Perry v. Sevier County Beer Commission, 181



Tenn. 696,
184 S.W.2d 32 (1944); Wright v. State, 171 Tenn. 628, 106 S.W.2d 866 (1937).

T.C.A. § 57-5-108 sets forth the requirements which one must meet in order to obtain a license to sell beer within cities, towns and metropolitan areas. Again, no minimum age is specifically provided. However, incorporated cities and towns and those counties governed by a metropolitan government are given the authority to impose additional restrictions fixing zones and territories and providing hours of opening and closing and such other rules and regulations as will promote public health, morals and safety. See T.C.A. § 57-5-108(a)(1) and (b)(1). Therefore, to determine the age requirement for obtaining a license to sell beer within an incorporated city, town, or metropolitan area, the rules and regulations of each local body must be consulted. Again, however, it should be noted that the Code does contain a general requirement that any person who is 18 years of age or older shall not be prohibited from entering into any profession or from performing any services on the basis of his minority. See T.C.A. § 1-3-114. Thus, any minimum age requirement for obtaining a permit to sell beer must not be higher than 18 years of age.

With regard to the language in the City's municipal code that addresses the qualifications for applying for a beer permit, Title 8, Chapter 3, Section 8-307 of your municipal code simply reads:

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. The application shall be made on such form as the board shall prescribe and/or furnish, and pursuant to Tennessee Code Annotated, § 57- 5-101 (b), and shall be accompanied by a non-refundable application fee of two hundred and fifty dollars (\$250.00). Said fee shall be in the form of a cashier's check payable to the City of []. Each applicant must be a person of good moral character and certify that he has read and is familiar with the provisions of this chapter. (emphasis mine)

There is additional language in the Title 8, Chapter 3, Section 8-310 of the City's municipal code that prohibits a beer permit from being issued to anyone convicted of certain crimes within 10 years of the date application is made. Aside from the provisions in the two previously referenced sections of the City's municipal code, there are no other qualifications set out therein for beer permit applicants.

Based upon the statutory language referenced above and according to the opinion from the AG's office, applicants for beer permits who are at least 18 years old can apply for and be issued a beer permit. If the City has concerns about this matter, staff may consider contacting members of their legislative delegation who can inquire with the AG's office to determine whether the opinion issued in 1987 is still the opinion of the office.

Please let me know if you have other questions. I suggest that you also confer with the city attorney on this matter before taking any action related to your inquiry.

Elisha D. Hodge
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