

June 4, 2004

Mr. Steve White
Vice-Mayor
City of Smithville
104 East Main Street
Smithville, TN 37166

Dear Mr. White:

These are the questions that I have from you relative to beer regulation in Smithville, Tennessee:

1. May the city board serve as the beer board?
2. May the city limit the number of permits?
3. Was the ordinance that I prepared making the city board the beer board legal?
4. If a business fails to provide the required inventory, may the city beer board revoke its beer license?
5. May a person who is serving a felony conviction have his beer license revoked?
6. May a beer license be transferred from an individual to a corporation?
7. May the city set up new distance requirements even though it has violated the existing distance requirements?

In answer to question 1, please be advised that Tennessee statutes specifically authorize the city board to serve as the beer board. This question has previously been addressed by our legal consultant to Mayor Burger.

In answer to question two, it is permissible for the city by ordinance to limit the number of permits.

In answer to question three, our legal consultant has reviewed the ordinance that I previously prepared at your request, and has advised me and the City of Smithville that the ordinance appears to be legal.

In answer to question four, if a business fails to provide the required inventory, the city beer board may suspend its beer license.

In answer to question five, if a licensed beer holder is convicted of a felony crime and is incarcerated, the beer board may revoke his beer license. In revoking the beer license, the city is required to observe established processes. I have never advised anyone to forcefully remove a beer license from the premises of a business without proper notice and other procedural processes.

In answer to question six, Dennis Huffer, our legal consultant, has advised that it is not permissible under the law to transfer a beer license from an individual to a corporation.

In answer to question seven, when the city beer board allowed a business that is 75 feet or so from a church or place of public gathering to have a beer permit, the city beer board effectively did away with the city's distance requirement. The city may enact a new ordinance with a 75 foot distance requirement. It cannot establish a new distance requirement of 200 feet, 300 feet, or anything over 75 feet, so long as it has a business that is 75 feet from a church or place of public gathering. If the city is concerned about beer permit holders not being located too close to churches or places of public gathering, the best way to ensure that this does not happen is to limit the number of permits to the existing permit holders. If it does not make any difference how close beer establishments are to churches, then I would not worry about limiting the number of permits.

I hope this answers your questions. Please feel free to call on me if I can be of further assistance.

Sincerely,

Don Darden
Municipal Management Consultant