

STATE OF TENNESSEE

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Opinion No. 04-010

Constitutionality of Tenn. Code Ann. § 57-3-402 as applied to mail order sales of wine to retail customers

QUESTION

Does Tenn. Code Ann. § 57-3-402, which prohibits vintners from making mail order sales of wine to retail customers, violate the Commerce Clause of the United States Constitution?

OPINION

No. The Twenty-First Amendment of the U.S. Constitution authorizes states to regulate the sale of alcoholic beverages within their borders so long as such authority is not used to discriminate against out of state manufacturers of alcoholic beverages. Tenn. Code Ann. § 57-3-402 prohibits both domestic and out-of-state vintners from making mail order sales to retail customers and is therefore constitutional.

ANALYSIS

Section 2 of the Twenty-First Amendment to the U.S. Constitution authorizes states to regulate the sale of alcoholic beverages within their borders. It states:

The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Although that amendment gives states wide latitude in regulating the sale of alcoholic beverages within their borders, the Commerce Clause still places limits on the use of that authority. *Bacchus Imports, Ltd. v. Dias*, 468 U.S. 263, 104 S.Ct. 3049, 82 L.Ed2d 200 (1984). As that case illustrates, states may not use the authority to regulate the sale of alcoholic beverages to engage in economic protectionism of domestically produced alcoholic beverages.¹

¹In *Bacchus*, the Court struck down a revenue provision that imposed taxes on alcoholic beverages produced out-of-state while granting exemptions to domestically produced products. In holding that the tax scheme violated the Commerce Clause, the Court noted that the statute was an attempt to erect the very trade barriers between states that the Commerce Clause was intended to prohibit. According to the Court, there was nothing in the Twenty-First Amendment

In *Heald v. Engler*, 342 F.3d 517 (6th Cir. 2003), the Sixth Circuit struck down a Michigan statute that authorized domestic vintners to make mail order sales to retail customers but prohibited out-of-state vintners from engaging in the same practice.² The Court noted that the Twenty-First Amendment did not authorize states to enact protectionist legislation to favor domestic manufacturers of alcoholic beverages over those from other states. It stated that to withstand a constitutional challenge, statutes regulating the manufacture and sale of alcoholic beverages must provide equal treatment for domestic and out-of-state producers.

No statute expressly prohibiting vintners from making mail order sales to retail customers has been found.³ Such sales are prohibited under the statutes governing the transportation of alcohol in this state, generally. Tenn. Code Ann. § 57-3-402 prohibits common carriers and other persons from bringing or carrying alcohol into Tennessee, unless the recipient is a manufacturer or licensed wholesaler of alcoholic beverages.⁴ Wine is an alcoholic beverage as that term is defined in Tenn. Code Ann. § 57-3-101(a)(1)(A). Vintners are manufacturers of alcoholic beverages as that term is defined by Tenn. Code Ann. § 57-3-101(a)(10).

Unlike the Michigan statute at issue in *Heald*, Tenn. Code Ann. § 57-3-402 makes no distinction between domestic and out-of-state vintners and other manufacturers of alcoholic beverages. By its terms, it applies equally to all and is therefore constitutional under the analysis that was employed by the Sixth Circuit in *Heald*.

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that would authorize states to use the authority to regulate alcohol to enact protectionist legislation.

²In *Dickerson v. Bailey*, 336 F.3d 388 (5th Cir. 2003), the United States Court of Appeals for the Fifth Circuit employed similar reasoning and reached the same conclusion in a case involving a Texas statute that allowed domestic vintners to make mail order sales to retail sales but prohibited out of state vintners from engaging in the same activity. Since federal courts in Tennessee are bound to follow the decisional law of the Sixth Circuit, the primary focus in the present opinion will be on the Sixth Circuit's reasoning in *Heald*.

³At the same time, no Tennessee statute expressly authorizing mail order sales has been found.

⁴Tenn. Code Ann. § 57-3-402(b) prohibits common carriers and other persons from bringing or carrying alcoholic beverages into the state unless they are consigned to a duly licensed manufacturer or wholesaler. Tenn. Code Ann. § 57-3-402(c) prohibits any person, common carrier or railroad company from transporting or accepting for delivery any alcoholic beverages unless they are consigned to a licensed wholesaler.

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