

**STATE OF TENNESSEE**

OFFICE OF THE  
ATTORNEY GENERAL  
425 FIFTH AVENUE NORTH  
NASHVILLE, TENNESSEE 37243

April 20, 2001

Opinion No. 01-062

Authority of local beer board to engage the services of a private investigator to investigate reports of the sale of beer to minors.

---

**QUESTIONS**

1. Do local beer boards have the authority to conduct undercover operations for possible violations, and may they use minors during these investigations?
2. If a vendor is caught selling beer to a minor, what are the penalties and who imposes them?
3. Does a private investigative agency have the authority to engage in an undercover operation concerning the sale of beer to minors?
4. Is there a statute of limitations on prior offenses regarding the sale of beer to minors?

**OPINIONS**

1. It is the opinion of this Office that local beer boards have the authority to engage in investigations concerning the sale of beer to minors and may use minors during these investigations.
2. It is the opinion of this Office that a vendor who is caught selling beer to a minor is subject to criminal penalties imposed by the local criminal court ranging from a class A misdemeanor to a class E felony. Furthermore, the vendor is also subject to the suspension or revocation of his permit imposed by the local beer board.
3. It is the opinion of this Office that a private investigative agency does have the authority to engage in undercover operations if employed by the local beer board based on reports of violations.
4. It is the opinion of this Office that prosecution for the sale of beer to minors must commence within twelve months if a class A misdemeanor and within two years if a class E felony.

## ANALYSIS

1. On February 24, 1993, the Tennessee Court of Appeals issued an opinion in which the Court held that county beer boards have the authority to police beer permit holders. *Billy Jackson v. The Franklin County Beer Board*, Franklin County, No. 01-A-01-9209CV-00355 (Tenn. App., filed February 24, 1993, at Nashville). In reaching its opinion, the Court held that county beer boards have discretionary powers in enforcing beer laws. Relying on prior case law, the Court of Appeals held “it is manifest that as the powers conferred on such agencies concededly fall within the proper exercise of the police power, in this case beer, such powers are continuing, supervisory powers, and are not spent and exhausted when the permit is issued leaving the agency helpless to revoke the permit for any cause or conduct, however serious, on the part of the licensee.” *Id.* Finally, the Court of Appeals opined that it “could find nothing in Chapter 57 of the Tennessee Code Annotated which prohibits the beer board from relying upon whatever information it has available to determine whether or not to revoke and/or suspend a beer permit.” *Id.*

As for the use of a minor during the undercover investigation, the Court of Appeals held that such action was permissible. *Id.* Relying upon Tenn. Code Ann. § 35-15-413, the Court held that a minor may be used to purchase beer so long as written approval of the minor’s parents and the juvenile court is obtained.

2. Permit holders are prohibited from making or permitting sales of beer to minors under Tenn. Code Ann. § 57-3-301(a), which makes the offense a class A misdemeanor. The penalty for a class A misdemeanor, found in Tenn. Code Ann. § 40-35-111, is imprisonment not greater than eleven months, twenty-nine days or a fine not to exceed two thousand five hundred dollars, or both. Each violation is a separate and distinct offense. Tenn. Code Ann. § 57-5-303(d). Upon the second conviction of making or permitting sales of beer to minors, the offender is guilty of a class E felony. Tenn. Code Ann. § 57-5-303(c). The penalty for a class E felony is imprisonment not less than a year nor more than six years and a fine not exceeding three thousand dollars. Tenn. Code Ann. § 40-35-111. These criminal penalties are imposed in criminal court proceedings.

In addition to the foregoing criminal penalties, the beer board that issued the beer permit is authorized to suspend or revoke the permit for violation of any provision of the beer laws, including selling beer to minors. Tenn. Code Ann. § 57-5-108. The board may, at the time it imposes a suspension or revocation, offer the permit holder the alternative of paying a civil penalty not exceeding \$1,500 for each offense involving sales to minors. If a civil penalty is offered as an alternative to suspension or revocation, the permit holder must be given seven days within which to pay the penalty before the suspension or revocation can be imposed. If the civil penalty is paid within that time, the suspension or revocation is deemed withdrawn. Tenn. Code Ann. § 57-5-108(a)(2)(A). The beer board is authorized to accept at any time the payment of a civil penalty, not exceeding the stated amounts, from a permit holder charged with a violation, and the payment will be deemed an admission of the violation and no other penalty can be imposed. Tenn. Code Ann. § 57-5-108(a)(2)(B). Upon the second criminal conviction for selling beer to minors, the permit of such person is automatically and permanently revoked regardless of any penalty actually imposed. Tenn. Code Ann. § 57-5-303(c).

A beer permit cannot be revoked if an operator or any person working for the operator sold beer to a minor over the age of 18 after the minor exhibited identification (false or otherwise) indicating the minor's age to be 21 or over, the minor reasonably appeared to be of that age, and the person making the sale did not know that the person was a minor. Tenn. Code Ann. § 57-5-108(b). In lieu of revocation, the permit may be suspended for up to 10 days or a penalty up to \$1,500 may be imposed. Tenn. Code Ann. § 57-5-108(b).

3. Based on the Court of Appeal's opinion in *Billy Jackson v. The Franklin County Beer Board*, a county beer board may hire a private investigatory firm to conduct investigations of beer permit holders.

4. Prosecution must commence within two years of the offense for a class E felony, Tenn. Code Ann. § 40-2-101, and within twelve months for most misdemeanors, Tenn. Code Ann. § 40-2-102.

---

PAUL G. SUMMERS  
Attorney General and Reporter

---

MICHAEL E. MOORE  
Solicitor General

---

J. ROSS DYER  
Assistant Attorney General

Requested by:

The Honorable Jerry Cooper  
Senator for the 14<sup>th</sup> Senatorial District  
War Memorial Building  
Room 309  
Nashville, TN 37243