

**STATE OF TENNESSEE**  
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Opinion No. 04-021

Authority of the Alcoholic Beverage Commission to Promulgate Rules Providing for Limited Denials of Alcohol Server Permits

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**QUESTION**

Pursuant to Tenn. Code Ann. § 57-3-710, does the Alcoholic Beverage Commission have the authority to promulgate regulations that would authorize it, in specifically delineated circumstances where server permits are denied under this chapter, and where revocation is not mandatory, to exercise its discretion under Tenn. Code Ann. § 57-3-214(a) to suspend the ability to receive a server permit for a length of time to be determined if denial of the permit would impose too drastic a penalty under the circumstances?

**OPINION**

No. Neither Tenn. Code Ann. §57-3-710 nor the statute governing server issuance and denial of server permits, Tenn. Code Ann. § 57-3-704, authorizes the Alcoholic Beverage Commission to promulgate a rule that would allow the commission to grant a server permit and immediately suspend it for a specific length of time.

**ANALYSIS**

The Commission has asked whether it has the authority to promulgate rules allowing it to grant and immediately suspend a server permit, rather than denying the permit, when outright denial would be too drastic under the circumstances. While administrative agencies have discretion in the promulgation of rules, that discretion is subject to limits. Administrative agencies must have statutory authority for the rules they promulgate. *Tennessee Cable Television Assn. v. PSC*, 844 S.W.2d 151 (Tenn. App. 1992).

The statute providing discretion to the Commission in permit revocation cases is Tenn. Code Ann. § 57-3-214(a), which states:

Whenever, under this chapter, the commission is authorized to revoke a license or permit issued by it, except in those cases where revocation is mandatory, it may, if, in its discretion, it feels that revocation of the license or permit is too drastic a penalty, suspend the license or permit, and the procedure for such suspension and

review of such suspension order shall be the same as that prescribed herein for revocation of licenses or permits issued under this chapter.

By its terms, that statute authorizes suspensions of licenses in cases where revocation would be unduly harsh. That provision makes no mention of denials of licenses or permits. Under rules of statutory construction, the express mention of one subject excludes others that are not mentioned. *State v. Peele*, 58 S.W.3d 701 (Tenn. 2001).<sup>1</sup> Since the statute mentions suspension as a substitute for revocation, but not as a substitute for denial, the statute gives the Commission no power to impose a suspension instead of denying the permit.

The request asks whether the Commission can use its broad rule-making authority to promulgate a rule to accomplish what the statute does not contemplate. The request cites Tenn. Code Ann. § 57-3-710, which gives the Commission broad authority to promulgate rules to implement the statutes governing the issuance of alcohol servers permits. It is a fundamental principle of administrative law that agencies have no authority to promulgate rules that would conflict with or modify the enabling statutes. *Tasco Building & Development Corp. v. Long*, 212 Tenn. 96, 368 S.W.2d 65 (1963).

Such a rule would also conflict with the provisions of another applicable statute. Tenn. Code Ann. § 57-3-704 governs the grant or denial of servers permits. It states:

Any individual may be eligible for a server permit by completing an application for such permit on the forms provided by the commission. An applicant for a server permit must demonstrate to the commission that the applicant meets the following requirements:

- (1) The applicant has not been convicted of any felony within the previous four (4) years;
- (2) The applicant has not been convicted of any crime relating to the sale of alcoholic beverages, beer, schedules 1 and 2 controlled substances or any sex-related crime or embezzlement within the previous eight (8) years;
- (3) The applicant has not had an employee or server permit or similar permit issued in a foreign jurisdiction revoked by any issuing authority within the previous five (5) years;
- (4) The applicant has not had any ownership interest in any licensee or permittee, licensed or permitted pursuant to § 57-3-203, § 57-3-204, § 57-4-101 or § 57-5-103 which has had its license or

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<sup>1</sup>As shown by other statutes, the legislature knows how to provide for the denial, suspension and revocation of licenses in a single statute when it intends to do so. *See, e.g.*, Tenn. Code Ann § 48-2-112 (denial, revocation, suspension, cancellation or withdrawals of securities broker-dealer, agent and investment advisor registrations). The provision of a separate statute to govern the grant or denial of such permits is further evidence that the legislature did not intend to regulate the denial of alcohol servers permits under Tenn. Code Ann. § 57-3-214(a) .

permit revoked by the issuing authority within the previous eight (8) years;

(5) Within one (1) year prior to the submission of the application the applicant has successfully completed a program of alcohol awareness training for persons involved in the direct service of alcohol, wine or beer by an entity certified by the commission to have an adequate training curriculum for alcohol awareness. If, in the determination of the commission, a state other than Tennessee is deemed to have an adequate program of alcohol awareness training, then the successful completion of such training in that state within one (1) year prior to the submission of an application to the commission for a server permit shall satisfy the requirement of alcohol awareness training; and

(6) The applicant is at least eighteen (18) years of age.

Reading Tenn. Code Ann. § 57-3-704 together with Tenn. Code Ann. § 57-3-710 indicates that the Commission does not have the authority to promulgate rules to provide for the suspension of the ability to receive a permit in lieu of an outright denial. Subsections (1) through (4) set forth grounds for denial based on events that occurred within specific time periods. The promulgation of a rule that would allow a person to receive a permit before the expiration of those time periods would modify the substantive provisions of those subsections and would therefore be invalid. The other two subsections provide training and age requirements, and there is nothing in those provisions that would authorize the Commission to modify them by rule.

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