

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
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April 21, 2009

Opinion No. 09-63

Sale of Alcoholic Beverages for On-premises Consumption and Tenn. Code Ann. §57-3-205

QUESTIONS

Does Tenn. Code Ann. § 57-3-205(b), which removes Knox County from the population restrictions for the granting of licenses for the retail sales of alcoholic beverages for off-premises consumption, also remove the county from the population restrictions that govern the issuance of licenses for sales of alcoholic beverages for consumption on the premises?

OPINIONS

No. Tenn. Code Ann. § 57-3-205 applies to the granting of licenses for retail sales of alcoholic beverages for off-premises consumption only and does not apply to licenses for sales of alcoholic beverages for consumption on the premises.

ANALYSIS

In Op. Tenn. Att’y Gen. 09-11, this office concluded that, upon a county’s passage of a referendum to allow the sale of alcoholic beverages for consumption on the premises, Tenn. Code Ann. §§ 57-3-106 and 57-4-103 restricted the sale of alcoholic beverages within the county for consumption on the premises to municipalities and civil districts having populations of more than 30,000 (as long as no part of any municipality was located within that civil district). Therefore, the passage of a referendum to authorize the sale of alcoholic beverages did not authorize any sales of alcoholic beverages for consumption on the premises in unincorporated areas of a county.¹ We are now asked whether Tenn. Code Ann. § 57-3-205 authorizes such sales in Knox County, notwithstanding Tenn. Code Ann. §§ 57-3-106 and 57-4-103.²

¹ As set forth in Op. Tenn. Att’y Gen. 09-11, the statutes do not permit either retail package sales of alcoholic beverages for off-premises consumption or sales for consumption on the premises in unincorporated areas of a county.

² The population classification found in Tenn. Code Ann. § 57-3-205(b) would include Knox County. According to the federal census of 1940, Knox County had a population of 178,468.

Tenn. Code Ann. § 57-3-205 states:

(a) No license entitling the holder thereof to sell or deal in alcoholic spirituous beverages at retail shall be granted with respect to premises not situated within either a municipality as defined in § 57-3-101 or within a civil district of a county, which district shall have a population of thirty thousand (30,000) persons or more according to the federal census for the year 1950 or any subsequent census, but which civil district shall not have lying either wholly or partially within its boundaries a municipality as defined in § 57-3-101.

(b) This section shall not be construed to apply to any civil district of any county of this state which county has a population of not more than one hundred seventy-eight thousand five hundred (178,500) nor less than one hundred seventy-eight thousand four hundred (178,400) according to the federal census of 1940 or any subsequent federal census.

The portion of the code in which this section appears—Title 57, Chapter 3, Part 2—governs licenses that are granted, and fees that are assessed, to alcoholic beverage manufacturers, wholesalers, retailers, and wineries.³ Specifically, Tenn. Code Ann. § 57-3-205 deals with the location of retail licenses for package sales for off-premises consumption. There is nothing in that section to indicate that such section was intended to govern sales of alcoholic beverages for consumption on the premises. Such sales are expressly governed by Tennessee Code Annotated, Title 57, Chapter 4.

Tenn. Code Ann. § 57-4-101 enumerates the premises on which particular sales for consumption on the premises may be had. Specifically, subsections (e) and (k) deal with unincorporated areas of certain counties. These sections state:

(e) It is lawful to serve wine as defined in § 57-3-101, and beer as defined in § 57-6-102, to be consumed on the premises of any restaurant as defined in § 57-4-102(27)(G), located in the unincorporated areas of any county having a population of not less than thirty thousand two hundred (30,200) nor more than thirty thousand four hundred seventy-five (30,475), according to the 1990 federal census or any subsequent federal census, subject to the further provisions of this chapter other than § 57-4-103.

* * *

³ For example, Tenn. Code Ann. § 57-3-202 governs the issuance of licenses to manufacturers and distillers; Tenn. Code Ann. § 57-3-203 governs the issuance of licenses to wholesalers; and Tenn. Code Ann. § 57-3-204 governs the issuance of licenses to retailers. By its terms, retail licenses that are issued pursuant to Tenn. Code Ann. § 57-3-204 permit retail package sales for off-premises consumption only.

(k) It is lawful to serve wine, as defined in § 57-3-101, to be consumed on the premises of any restaurant, as defined in § 57-4-102(27)(I), located in any county having a population of not less than sixty-nine thousand four hundred (69,400) nor more than sixty-nine thousand five hundred (69,500), according to the 2000 federal census or any subsequent federal census, subject to the further provisions of this chapter other than § 57-4-103.

Tenn. Code Ann. § 57-4-101.⁴

Your question asks about alcoholic beverage sales for consumption on the premises. As set forth more fully in Op. Tenn. Att’y Gen. 09-11, Tenn. Code Ann. § 57-3-106 only applies to sales of alcoholic beverages for consumption on the premises by virtue of its express mention in Tenn. Code Ann. § 57-4-103(a). Tenn. Code Ann. §§ 57-4-101 *et seq.*, on the other hand, makes no reference to Tenn. Code Ann. § 57-3-205, and those sections govern the areas where sales for consumption on the premises may be had.⁵

Under rules of statutory construction, the express mention of a subject or subjects in a statute means the exclusion of subjects that were not mentioned. *Wells v. Tenn. Bd. of Regents*, 231 S.W.3d 912 (Tenn. 2007). The fact that Tenn. Code Ann. §§ 57-4-101 and 57-4-102 expressly state where sales of alcoholic beverages for consumption on the premises may take place while making no mention or reference to Tenn. Code Ann. § 57-3-205 indicates that the legislature did not intend for Tenn. Code Ann. § 57-3-205 to apply to sales of alcoholic beverages for consumption on the premises. Therefore, the provisions of Tenn. Code Ann. § 57-3-205, including the exclusion that is set forth in subsection (b), apply to sales of alcoholic beverages for off-premises consumption only, and have no application to sales of alcoholic beverages for consumption on the premises.

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⁴ See also Tenn. Code Ann. § 57-4-102(27)(G)(i) which states:

“Restaurant” also means a facility:

(i) Located within one-half (1/2) mile of the railroad tracks in the unincorporated area of any county having a population of not less than thirty thousand two hundred (30,200) nor more than thirty thousand four hundred seventy-five (30,475), according to the 1990 federal census or any subsequent federal census. . .

⁵ The placement of various exceptions to the general operation of Chapter 4 within that same chapter indicates that the legislature intended to place all such exceptions within the same chapter and did not intend to place any exceptions elsewhere within the Title, except where expressly stated.

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