S T A T E O F T E N N E S S E E
OFFICE OF THE
ATTORNEY GENERAL
PO BOX 20207
NASHVILLE, TENNESSEE 37202

March 14, 2005

Opinion No. 05-024

Inability of Counties to Prohibit the Sale of Cold Beer

QUESTIONS

1. Does a Class A county have the authority under Title 57 of the Tennessee Code Annotated to prohibit the sale of cold beer, iced or mechanically cooled, at convenience stores and grocery stores in the unincorporated areas of the county?

2. Could a Class A county prohibit the sale of cold beer, iced or mechanically cooled, at convenience stores and grocery stores in the unincorporated areas of the county through a private act passed by the General Assembly?

OPINIONS

1. No, it does not. A Class A county may only approve or disapprove the application for a beer permit, and, when the applicant meets the statutory requirements of Tenn. Code Ann. § 57-5-105, issuance of the permit is mandatory.

2. No, it could not. Tenn. Code Ann. § 57-5-105 is a general law granting counties power and limited discretion over the issuance of beer permits. A private act relating to this authority would necessarily suspend this general law and violate Article XI, Section 8 of the Constitution of Tennessee unless there was a rational basis for the separate classification of the county in question.

ANALYSIS

1. Class A counties are defined in Tenn. Code Ann. § 57-5-103(b) as counties not governed by metropolitan governments as defined in Tenn. Code Ann. § 7-2-101. They are one of three types of local government entities empowered by the state legislature in Title 57, Chapter 5 of the Tennessee Code to regulate beer sales, the other types being municipalities and Class B counties, defined as those that are governed by metropolitan governments. Tenn Code Ann. § 57-5-103(b).

The regulatory authority given to Class A counties may be found in Tenn Code Ann. § 57-5-105, which lists the requirements for beer permit applicants at subsection (b). This Office has previously opined that "[t]he language of [Tenn. Code Ann.] § 57-5-105 must be taken as excluding

county legislative bodies from making any regulations beyond its provisions." Op. Tenn. Att'y Gen. No. U81-006 (January 9, 1981). The reasoning for this proposition has been announced by the Tennessee Supreme Court:

> There appears to be express authority of cities and towns to pass proper ordinances governing the issuance and revocation of licenses. . . . If it were intended that the county court should exercise like authority and to make ordinances or resolutions beyond the provisions of the legislative act, this authority, we think, would not have been expressly given to the municipal corporations without being given to the county court. The language of the statute, granting such authority only to municipal corporations, seems upon its face to exclude county courts from making any regulation beyond the provisions of the statute.

Wright v. State, 171 Tenn. 628, 637-38 (1937). Because of this express grant of additional power to municipalities, this Office has previously concluded that the "[p]owers of Class A counties are much more closely circumscribed by [Tenn Code Ann.] §57-5-105, and, where an applicant meets the statutory criteria, issuance of a permit is mandatory." Op. Tenn. Att'y Gen. No. 84-154 (May 3, 1984), citing *Howard v. Willocks*, 525 S.W.2d 132, 135-36 (Tenn. 1975). The legislature has "mandated that an applicant for a beer permit, who complies with all the legal requirements, shall be entitled to have such license or permit issued to him." *Howard*, at 136. It is clear then that Class A counties do not possess the power to create beer permit requirements in addition to those contained in Tenn Code Ann. §57-5-105(b).

The power of a county to regulate the issuance of beer permits is thus limited to a determination of whether each applicant for a permit has met the statutory "conditions and provisions" set out in Tenn Code Ann. §57-5-105(b). *See* Tenn Code Ann. §57-5-105(e). This determination is made by the county legislative body or a committee appointed by that body. Tenn Code Ann. §57-5-105(a). This formulation does not allow counties to impose an additional requirement that only unrefrigerated beer may be sold.

2. As noted above, the courts of this State and the prior opinions of this Office are in agreement that the power of Class A counties to regulate the sale of beer is limited to administering the issuance of beer permits, in which their discretion is closely circumscribed by the language of Tenn Code Ann. §57-5-105(b), which provides a list of conditions necessary for a successful beer permit application. Counties are without power to withhold a beer permit if the applicant has met those statutory conditions. These provisions amount to a general law that applies to all counties not governed by a metropolitan government.

Article XI, Section 8 of the Tennessee Constitution states that "the Legislature shall have no power to suspend any general law for the benefit of any particular individual, nor to pass any law for the benefit of individuals inconsistent with the general laws of the land." In addressing the constitutionality under this clause of a private act that proposed to put the legality of beer sales in

Hawkins County to a referendum of county voters (by way of a population bracketing provision that included that county), the Tennessee Supreme Court noted that it had in the past made a "clear distinction" between those private acts which confer benefits and burdens on citizens of one county in the absence of a general statute and those that operate to "amend or abrogate" a general statute in its application to a certain county or counties — the former class are upheld, the latter struck down. *Sandford v. Pearson*, 190 Tenn. 652, 657-58 (1950). Furthermore, if an act "primarily affects the rights of the citizens, without affecting others in like condition elsewhere in the state, it is invalid." *Id.* at 657, citing *State ex rel. Hamby v. Cummings*, 166 Tenn. 460, 464 (1933).

As this Office has opined in the past in response to a similar question,

> [A]ny private act relating to the counties' authority to regulate the sale of beer would necessarily suspend the general law. This would be constitutionally permissible only if the classification was reasonable. However, as our Supreme Court stated in *Sandford et al. v. Pearson et al.*, 190 Tenn. 652, 231 S.W.2d 336, which involved similar circumstances, it is difficult to distinguish the beer problems in one county from counties of similar size throughout the State, and, as a result, such a private act would be an unreasonable classification.

Op. Tenn. Att'y Gen. to Sen. Ken Porter (March 27, 1973). Given that the private act posited in this request would primarily affect the rights of citizens in a single county by amending a prior general law, there must be a rational basis for the classification in order for the proposed private act to comply with Article XI, Section 8 of the Tennessee Constitution, as indicated above by the *Sandford* Court. If there were such a rational basis, then such a private act would pass constitutional muster. However, given the factual scenario and the Supreme Court's past treatment of a classification purporting to address the "beer problems" of an individual county in *Sandford*, it seems unlikely that a rational basis for the classification in the instant situation would be found.

PAUL G. SUMMERS
Attorney General

MICHAEL E. MOORE
Solicitor General

BRAD H. BUCHANAN
Assistant Attorney General

Requested by:

The Honorable Russell Johnson
State Representative, 21st Legislative District
110 War Memorial Building
Nashville, Tennessee 37243-0121