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Opinion No. 05-144

Application of Tenn. Code Ann. § 57-5-105(i) to Establishments Operating in a Structurally Separate Portion of a Building

QUESTION

Should a county that has imposed a 300-foot rule for beer sales under Tenn. Code Ann. § 57-5-105(i) determine the minimum distance from a residential dwelling, whose owner has duly objected to such sales, by measuring from the nearest portion of the entire building where such sales occur or from the nearest portion of a structurally distinct portion of that building that houses the business that engages in beer sales?

OPINION

It is the opinion of this Office that the 300-foot distance should be measured from the nearest portion of the entire building in which sales of beer occur.

ANALYSIS

Tenn. Code Ann. § 57-5-105(i) provides that "Class A counties, by resolution of their county legislative bodies, may forbid the sale of beer within three hundred feet (300') of a residential dwelling, measured from building to building; provided, that the owner of the residential dwelling appears in person before the county beer board and objects to the issuance of such permit or license." This is the so-called "300-foot rule." A Class A county is one "not governed by metropolitan governments as defined in § 7-2-101." Tenn. Code Ann. § 57-5-103(b). Henry County, to which this opinion relates, is such a county.

The facts submitted to this Office for consideration involve an application for a beer permit by a business that desires to operate in a building for which a beer permit has previously been denied. According to these facts, it is "a long narrow building, runs parallel to a highway and generally runs in a north-south direction. The 300-foot rule is violated by residences being within 300 feet of the northeast corner of the building. Those same residences are *not* within 300 feet of the southeast corner of the building." (emphasis in original). The permit being considered in the instant case is for a business that would occupy roughly only the southern third of the building. "The southern portion is more than 300 feet from the residences which had earlier blocked the permit application involving the entire building," according to the facts provided. Moreover, the facts as given indicate "that the northern two-thirds of the building would be used for some purpose

other than beer selling and a separate business owned by different people would operate a beer-selling facility in roughly the southern one-third of the building."

This Office is aware of no case which addresses the effect of subdividing a building on the requirements for minimum distances from an establishment holding a beer permit under the criteria of Tenn. Code Ann. §§ 57-5-105(b)(1) or (i). In determining such a distance,

> The general rule is, unless otherwise specifically provided by statute, that: 'the distance contemplated by a statute or regulation prohibiting the granting of a license for the sale of intoxicating liquors, or traffic therein, within a certain distance of a named institution or place (e. g., church, school, hospital, soldiers' home, training camp), must be measured in a straight line, rather than in some other manner, such as by the usually traveled route or the street lines.'

Jones v. Sullivan County Beer Bd., 200 Tenn. 301, 306, 292 S.W.2d 185, 187 (1956) (citing Annot., 96 A.L.R. 778). This is known as the "straight-line method" or rule. *See* Op. Tenn. Att'y Gen. No. U96-084 (Oct. 16, 1996). For the 300-foot rule, the proper endpoints of this straight line are the relevant buildings, as specified by Tenn. Code Ann. § 57-5-105(i):

> Class A counties, by resolution of their county legislative bodies, may forbid the sale of beer within three hundred feet (300') of a residential dwelling, **measured from building to building**; provided, that the owner of the residential dwelling objects to the issuance of such permit or license. This provision shall not apply to locations where beer permits or licenses have been issued prior to the date of adoption of such a resolution by the county legislative body, or to an application for a change in the licensee or permittee at such locations. (emphasis supplied).

The issue at hand is whether "building" in this statute must mean the entire structure in which the particular establishment is housed, or if the proper endpoint is that partitioned-off portion of the building used for the establishment's business. The legislature explicitly chose the word "building" to define the endpoints for measuring the minimum range between a location selling beer and the nearest residence. The term is not ambiguous and no understanding of its plain meaning would define a partitioned-off segment of a building — even if operated as a separate business from the remainder of the building — as a "building" in and of itself. Indeed, this alternative reading would require the Legislature to have asserted that a building could be made up of buildings — the same term designating the component as designates the whole.

The Legislature specifically chose this term for the measuring of endpoints, and we cannot presume that this was done lightly. Indeed, the Legislature's specification of "building" in this instance is emphasized by its use of other terms to refer to the locus of the activity that is being

regulated in Tenn. Code Ann. § 57-5-105. The Legislature speaks of "premises" ("the applicant shall not be allowed to apply again for a permit or license on the same premises" in Tenn. Code Ann. § 57-5-105(h)) and "location" ("This provision shall not apply to locations where beer permits or licenses have been issued prior to the date of adoption" in Tenn. Code Ann. § 57-5-105(i)). *These* terms, perhaps, could be understood to refer only to the partitioned-off portion of a building such as the one in the instant request. If the Legislature had intended to specify the boundaries of each individual establishment as the proper endpoints, it could have done so with precise language to that effect, or at least terms such as "location" and "premises" that could be read consistently with such an intent and that are used in the very same section for other purposes (and hence can be said to have been in the contemplation of the Legislature while framing this provision). Instead, the Legislature has specifically identified "buildings" as the proper endpoints, a term far less compatible with the suggested reading (that the minimum range should be measured from the corners of partitioned-off parts of buildings) than several terms within the immediate contemplation of the Legislature.

The Tennessee Supreme Court cautions that "[t]he cardinal rule of statutory construction is to follow the plain meaning of the statute where the language is clear and unambiguous on its face. 'Legislative intent or purpose is to be ascertained primarily from the natural and ordinary meaning of the language used, without forced or subtle construction that would limit or extend the meaning of the language.'" *Jackson v. General Motors Corp.*, 60 S.W.3d 800, 804 (Tenn. 2001), *citing Hamblen County Educ. Ass'n v. Hamblen County Bd. of Educ.*, 892 S.W.2d 431 (Tenn Ct. App. 1994). As discussed above, the plain meaning of the term "building" cannot be extended to partitioned-off portions of a building. While in some instances "[t]he reason and intention of the law will prevail over the literal sense of the words" (*Polk County v. State Board of Equalization*, 484 S.W.2d 49, 58-59 (Tenn. Ct. App. 1972)), the purposeful legislative choice of the term "building" in lieu of terminology better suited to achieving the suggested "reason and intention of the law" is a strong indication that the Legislature's purpose and the literal meaning of its words are identical in this instance.

It is true that the results of this literal reading of the term "building" may seem unusual when the statute is applied to certain fact patterns. Beer-selling establishments occupying segments of large commercial buildings will see their 300-foot zones projected over significantly more acreage than comparable businesses located in a single building standing alone. Similarly, a beer-selling establishment in a single building on a closely-packed city block where there is practically no space between the outer walls of each building, will have its minimum distance measured from the corner of its own building, while the "strip mall" establishment must measure its minimum distance from the corners of the entire building, even though the strip mall may be very little different as a functional matter from the row of buildings described. Such results may appear incongruous, but they are required by the plain language of the statute, which can be amended if these outcomes were not anticipated.

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