

STATE OF TENNESSEE
OFFICE OF THE
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Opinion No. 04-063

Proposed Amendment to Liquor Laws under Article II, Section 17

QUESTIONS

1. The caption to Senate Bill 2119 is “AN ACT to amend Tennessee Code Annotated, Section 57-4-102, relative to consumption of alcoholic beverages in certain museums.” A proposed amendment to this act would amend the definition of the term “premier type tourist resort” in Tenn. Code Ann. § 57-4-102. Does this amendment fall within the caption of the act as required under Article II, Section 17, of the Tennessee Constitution?

2. If the amendment falls outside the caption as required under Article II, Section 17, and the act is enacted with the amendment, would the Alcoholic Beverage Commission be authorized to issue a license under the new act?

OPINIONS

1. The proposed amendment falls outside the restrictive caption of the act and, therefore, violates Article II, Section 17, of the Tennessee Constitution.

2. If the act is passed with the amendment and is not challenged under Article II, Section 17, of the Tennessee Constitution before it is reenacted as part of the code, then the violation of that section because of the caption is moot. Under these circumstances, we think the Alcoholic Beverage Commission should administer the act as enacted.

ANALYSIS

1. Article II, Section 17, of the Tennessee Constitution

This opinion concerns the constitutionality of a proposed amendment to Senate Bill 2119. The caption of Senate Bill 2119 provides:

AN ACT to amend Tennessee Code Annotated, Section 57-4-102,
relative to consumption of alcoholic beverages in certain museums.

Section 1 of the act adds a new subdivision (E) to the definition of “museum” contained in Tenn. Code Ann. § 57-4-102(21). The proposed amendment would add a new section to the act

amending Tenn. Code Ann. § 57-4-102(24) by adding the following language as a new designated subdivision:

- (_) A commercially operated facility which contains all of the following characteristics:
- (i) Such facility is licensed as a health club;
 - (ii) Such facility only allows members and their invited guests;
 - (iii) Such facility has two (2) swimming pools with one pool having at least 15,000 square feet of water surface;
 - (iv) Such facility provides volleyball courts, a basketball court and a recreation area with food service;
 - (v) Such facility is located within fifteen (15) miles of an airport; and
 - (vi) Such facility is located within a county having a population of not less than three hundred eighty-two thousand (382,000) nor more than three hundred eight-two [sic] thousand one hundred (382,100) according to the 2000 federal census or any subsequent federal census.

The first question is whether this amendment falls within the caption of the bill as required by Article II, Section 17, of the Tennessee Constitution. Under that provision, “No bill shall become a law which embraces more than one subject, that subject to be expressed in the title.” The caption of the bill contains the following restriction: “relative to consumption of alcoholic beverages *in certain museums.*” (Emphasis added). If the legislature has adopted a restrictive title where a particular part or branch of a subject is carved out in the limited title, then the body of the act must be confined to the particular portion expressed in the limited title. *Tennessee Municipal League v. Thompson*, 958 S.W.2d 333 (Tenn. 1997). The amendment amends the definition of “premiere type tourist resort” under Tenn. Code Ann. § 57-4-102(24). There is no apparent connection between a “premiere type tourist resort” and the consumption of alcoholic beverages in certain museums. For this reason, the amendment falls outside the caption of the bill in violation of Article II, Section 17, of the Tennessee Constitution.

2. Effect of Caption Violation

The second question assumes that the amendment falls outside the caption of the bill and is included in the bill as enacted. The question is whether the Alcoholic Beverage Commission may issue a liquor license under the act, even if part of the body falls outside the caption in violation of Article II, Section 17, of the Tennessee Constitution. We assume this question refers to the Commission’s authority to issue a license to an entity — including a museum or a premiere type tourist resort — that wishes to sell wine or other alcoholic beverages for consumption on its premises under Tenn. Code Ann. § 57-4-201(b)(1). As discussed above, this Office has concluded that the act, if it includes the amendment, would be unconstitutional. Since the doctrine of elision is not

avored, and the act contains no severability clause, a court would probably void the entire act and not just Section 2. *State v. Harmon*, 882 S.W.2d 352, 355 (Tenn. 1994), quoting *Gibson County Special School Dist. v. Palmer*, 691 S.W.2d 544 (Tenn. 1985). But a statute is presumed to be valid until it has been found unconstitutional by a court of competent jurisdiction. *Cumberland Capital Corp. v. Patty*, 556 S.W.2d 516 (Tenn. 1977); Op. Tenn. Att’y Gen. 84-157 (May 8, 1984). Further, the subsequent reenactment of an act as part of the code cures any caption defects in violation of Article II, Section 17, of the Tennessee Constitution. *Stewart Title Guaranty Co. v. McReynolds*, 886 S.W.2d 233 (Tenn. Ct. App. 1994), *p.t.a. denied* (1994). If the act, therefore, is not challenged before it is reenacted as part of the code, then the violation of that section because of the caption will be moot. Under these circumstances, therefore, we think the Alcoholic Beverage Commission should administer the law as enacted.

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