County Technical Assistance Service

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Distance Rules

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Sincerely,

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Reference Number: CTAS-356

County legislative bodies do have certain statutory powers concerning the regulation of the sale of beer in the county which are not shared by the county beer board and cannot be delegated to the board. Only the county legislative body can adopt a resolution to extend the hours for selling beer in the county, and only the county legislative body can adopt distance resolutions, like the 2,000 foot rule and the 300-foot rule. T.C.A. § 57-5-105. Attorney General Opinion 82-325 (6/24/82).

When construing the statutes governing distance rules, it is generally the policy of the courts to construe the statutory provisions liberally in favor of the regulations and the places or institutions they are designed to protect, and strictly against the applicants for the beer permits. Y & M v. Beer Commission or Beer Board of Johnson County, 679 S.W.2d 446 (Tenn. 1984); St. John v. Beer Permit Board, 1998 WL 832392 (Tenn. App. 1998).

Distance rules must be applied uniformly. The Attorney General has opined that a Class A county cannot draw a distinction between on-premises and off-premises consumption for purposes of distance rules, so the same distance rule must be applied regardless of whether the establishment sells beer for consumption on-premises or off-premises. Attorney General Opinions U93-74 (6/17/93) and 01-157 (10/25/01). The Attorney General has also opined that a county cannot enact different distance rules in different areas of the county. Op. Tenn. Att'y Gen. 02-092 (8/28/02) at *7.

If a county changes its distance requirements, it is the distance rule in effect at the time the board votes on the application for a permit that controls that permit application. Attorney General Opinion 10-98 (9/15/10).

Holders of state licenses to sell liquor by the drink are not exempt from local distance rules. If they wish to sell beer, they are subject to the same distance requirements as other beer permit holders. Attorney General Opinion 99-098 (4/30/99).

The 2,000 Foot Rule

Reference Number: CTAS-357

County legislative bodies are given the authority to forbid the sale, storage and manufacture of beer within 2,000 feet of schools, churches and other places of public gathering. T.C.A. § 57-5-105(b)(1). The 2,000 foot rule applies even where the church, school or public gathering place is across state lines. Y & M v. Beer Commission or Beer Board of Johnson County, 679 S.W.2d 446 (Tenn. 1984).

A “church” has been defined by the Attorney General as a building regularly used for public worship. Attorney General Opinion 97-060 (5/1/97). A “place of public gathering” has been defined as a place which the general public has a right to visit and which is in fact visited by many people. Attorney General Opinion U90-121 (8/17/90). A public gathering place is usually confined to schools, churches, and similar public places, and does not include commercial establishments such as stores, filling stations, or dance halls. See Wright v. State, 171 Tenn. 628, 106 S.W.2d 866 (1937). A public cemetery may constitute a public gathering place, depending upon the nature of the cemetery. Attorney General Opinions 91-57 (6/10/91), 92-51 (9/16/92), and 12-02 (1/6/12). A day care center, whether privately owned or owned by a church, meets the definition of "public gathering place." Attorney General Opinions 97-060 (5/1/97) and 98-069 (3/25/98). A baptismal site located on private property is not considered a public gathering place because the public has no right to use the site. Adams v. Monroe County Quarterly Court, 379 S.W.2d 769 (Tenn. 1964). A sports complex containing a day care center is a place of public gathering, but a National Guard armory is not. Tennessee Sports Complex, Inc. v. Lenoir City Beer Board, 106 S.W.3d 33 (Tenn. Ct. App. 2002).

The adoption of the 2,000 foot rule is discretionary. A county legislative body must adopt a resolution implementing the 2,000 foot rule before it can be enforced in the county. Once enacted by the county legislative body, the county beer board can enforce the rule and deny beer permits which violate the rule. T.C.A. § 57-5-105(b)(1). A county beer board issuing a permit contrary to a distance rule adopted by the county legislative body has violated its obligation of upholding and enforcing the laws. Attorney General Opinion 82-325 (6/24/82). (Sample resolution to enact a 2,000 foot rule for the sale of beer).

Once the 2,000 foot rule is adopted, it must be enforced uniformly, and discretionary application of the rule renders it invalid. Serv-U-Mart, Inc. v. Sullivan County, 527 S.W.2d 121 (Tenn. 1975). An invalid distance resolution cannot be used as grounds for denial of a beer permit. Seay v. Knox County Quarterly Court, 541 S.W.2d 946 (Tenn. 1976). (See the discussion under Restoring an Invalid Distance Rule below.)

Distance Rules of Less than 2,000 Feet

Reference Number: CTAS-358

While the statute speaks only of a 2,000 foot rule, the Tennessee Supreme Court has held that the authority to impose a 2,000 foot rule implies that a county may impose a rule prohibiting the sale of beer within a lesser radius from churches, schools or places of public gathering. Youngblood v. Rutherford County Beer Board, 707 S.W.2d 507 (Tenn. 1986). Thus, the statute establishes only the maximum distance within which the county can prohibit beer sales, and counties may prohibit the sale of beer within any lesser distance. Attorney General Opinion U93-74 (6/17/93). However, once the county's distance rule is established, it must be uniformly enforced or it will become invalid.

The 300 Foot Rule

Reference Number: CTAS-359

The county legislative body may adopt a resolution to forbid the sale of beer within 300 feet of a residential dwelling, measured from building to building. (Sample resolution to enact 300 foot rule for the sale of beer). In order to use this distance rule to deny an application for a beer permit, the owner of the residential dwelling must appear before the county beer board, in person, and object to the issuance of the permit. The term "residential dwelling" is not defined in the statute; however, it has been interpreted to include a trailer that was occasionally occupied for residential purposes. St. John v. Beer Permit Board, 1998 WL 832392 (Tenn. App. Dec. 2, 1998). This statute applies to zoned as well as unzoned property. This distance rule does not apply to locations where beer permits were issued prior to the date the rule was adopted by the county legislative body, nor does the rule apply to applications for a change in the licensee or permittee at such locations. T.C.A. § 57-5-105(i).

Measuring to Enforce Distance Rules

Reference Number: CTAS-360

The Tennessee Supreme Court, in Jones v. Sullivan County Beer Board, 292 S.W.2d 185 (Tenn. 1956), held that the exclusive method for measuring distance requirements between beer establishments and schools, churches and other places of public gathering is the straight-line method, unless a different method is prescribed by statute. There is no statute in Tennessee prescribing a method for such measurements. The straight-line method of measuring requires that the distance be measured in a straight line between the properties, at their nearest points, rather than by driving distance or other method. The measurement is made from building to building with respect to distance, because T.C.A. § 57-5-105(b)(1) requires measurement from the “place of gathering,” which would be the building. Ewin v. Richardson, 399 S.W.2d 318 (Tenn. 1966). According to the Attorney General, the measurement must be taken from the nearest portion of the entire building, and not just from the nearest portion of a structurally distinct portion of that building that houses the business engaged in the sale of beer. Attorney General Opinion 05-144 (9/27/05). A distance rule will be enforced even when the church, school, or other place of public gathering is located across the state line. Y & M v. Beer Board of Johnson County, 679 S.W.2d 446 (Tenn. 1984) .

Grandfather Provisions

Reference Number: CTAS-361

When a county adopts a distance rule, the rule cannot be used as grounds to revoke a permit where a church, school or other place of public gathering is built after a beer permit is issued, as that would constitute an arbitrary and unreasonable exercise of discretion. Sparks v. Beer Committee of Blount County, 339 S.W.2d 23 (Tenn. 1960). The court stated that while there is no property right in a permit to sell beer,

there are some rights which cannot be taken away by unreasonable regulations adopted after the permit was granted. Sparks, at page 24. See also Attorney General Opinion 02-061 (5/8/02).

Under T.C.A. § 57-5-109, a beer permit cannot be suspended, revoked or denied on the basis of proximity to a school, residence, church or other place of public gathering if a valid permit was issued to any business on that same location. The phrase "on that same location" is defined in the statute as being within the boundaries of the real property on which the business was located, and the protection applies regardless of whether the business moves the building on the location or whether the business was a conforming or nonconforming use at the time of the move. T.C.A. § 57-5-109(b). Under this statute, a validly permitted building which meets the distance requirements can be demolished and rebuilt in a different location on the same property which does not meet the distance requirements and the permit cannot be denied. Exxonmobil Oil Corp. v. Metropolitan Government of Nashville, 2005 WL 1528252 (Tenn. Ct. App. 12/12/05).

This grandfather provision does not apply if there has been a six-month gap in beer sales at the location. However, if the discontinuance of beer sales for more than six months is caused by a beer board's refusal to issue a permit, the applicant does not lose the protection of the statute if the applicant appeals the denial; a new six- (6) month period begins to run on the date when the appeal of the denial is final. T.C.A. § 57-5-109(c).

The current provisions of this statute are a result of litigation between Exxon and the Metropolitan Government of Nashville and Davidson County. See Exxon Corp. v. Metropolitan Government of Nashville of Nashville and Davidson County, 72 S.W.3d 638 (Tenn. 2002) and Exxonmobil Oil Corp. v. Metropolitan Government of Nashville and Davidson County, 2005 WL 1528252 (Tenn. Ct. App. 12/12/05). In the Exxon cases, the original building was not in violation of the distance requirement. Exxon purchased the business, demolished the building and relocated it in a position that did violate the distance requirement. The statute was amended to allow Exxon to fall within its provisions regardless of whether the business was conforming at the time the building was moved. This has caused the statute to be broader than a typical "grandfather" provision.

Restoring an Invalid Distance Rule

Reference Number: CTAS-362

When a county issues beer permits in violation of an established distance rule, the rule becomes invalid and it can no longer be used as a basis for denying other permits. Cox Oil Co., Inc. v. City of Lexington Beer Board, 2002 WL 31322533 (Tenn. Ct. App. 2002); Randolph v. Coffee County Beer Board, 2002 WL 360335 (Tenn. Ct. Ap. 2002); Reagor v. Dyer County, 651 S.W.2d 700 (Tenn. 1983); Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983); Henry v. Blount County Beer Board, 617 S.W.2d 888 (Tenn. 1981); City of Murfreesboro v. Davis, 569 S.W.2d 805 (Tenn 1978); Seay v. Knox County Quarterly Court, 541 S.W.2d 946 (Tenn. 1976). Restoring an invalid distance rule is a difficult process which usually results in costly litigation, and the law on this subject is complex and confusing. To avoid problems, distance rules should be carefully enforced.

To restore an invalid distance rule, the county legislative body generally has two options. The first option is to rescind the existing distance rule and establish a less restrictive rule within which all issued beer permits would fall. A new distance rule could be established by measuring the shortest distance between an existing licensee and the nearest school, residence, church or other place of public gathering. This new rule could then be uniformly applied. Youngblood v. Rutherford County Beer Board, 707 S.W.2d 507 (Tenn. 1986); Attorney General Opinion U88-17 (2/18/88).

The second option is to pass a new resolution reinstating the distance rule, but in order to do this all permits that were issued in violation of the distance rule must be eliminated by revocation or some other method. Henry v. Blount County Beer Board, 617 S.W.2d 888 (Tenn. 1981); Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983); Randolph v. Coffee County Beer Board, 2002 WL 360335 (Tenn. Ct. Ap. 2002). As a practical matter, this means that all invalidly issued permits must be revoked. However, permits that were issued in conformance with the distance rules in existence at the time they were issued are validly issued permits protected under T.C.A. § 57-5-109, and these permits cannot be revoked.

In theory the distance rule also may be restored by elimination of the discriminatorily issued permits through attrition. Attorney General Opinion 87-34 (3/6/87); see also Attorney General Opinion U91-51 (4/9/91). However, in practice this could be a lengthy process and the distance rule could be challenged

and declared invalid if the county allows discriminatorily issued permits to remain in use while using the distance rule to deny other applications for permits. An earlier opinion of the Attorney General states that elimination through attrition is in the nature of a post facto amendment which does not cure an invalid distance ordinance. Attorney General Opinion 82-325 (6/24/82). See also City of Murfreesboro v. Davis, 569 S.W.2d 805 (Tenn. 1978).

To complicate matters, courts occasionally find that permits issued invalidly cannot be revoked, usually in the context of detrimental reliance. In Needham v. Beer Board of Blount County, 647 S.W.2d 226 (Tenn. 1983), there had been a full hearing prior to the issuance of the permit, the applicant made it clear that he would not build if the permit was not issued, the permit was issued and the permit holder operated his business there for over 10 years. Under these circumstances the court found that the permit could not be revoked. In other cases courts have required issuance of permits even though they violate the existing distance rule. In Coffman v. Beer Board of City of Jellico, 1992 WL 122676 (Tenn. Ct. App. 1992), the court found that building a convenience mart in reliance on a city ordinance stating that the distance was to be measured along right-of-way was sufficient "detrimental reliance" to prohibit the beer board from refusing to issue a permit based on the Supreme Court's opinion that distance must be measured by the straight line method.

Prohibition of Beer in Public Parks

Reference Number: CTAS-363

The county legislative body may also, by resolution, prohibit or restrict the consumption of any alcoholic beverage or beer in public parks or recreation areas which are not within the corporate boundaries of a municipality. Such areas must be prominently posted by the county in order to give the public reasonable notice. A violation of the resolution is a misdemeanor. T.C.A. § 5-5-127. While the statute only refers to consumption, restrictions on the sale of beer within park boundaries are so closely tied to consumption that they come within the intent of the statute. However, the statute does not seem to be intended to prohibit the mere possession of beer or alcoholic beverages in Class A counties. Attorney General Opinion U87-19 (2/10/91). (Sample resolution to restrict/prohibit the consumption of beer in public parks or recreation areas).
