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Beer Permits

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Beer Permits

Reference Number: CTAS-341

It is unlawful to operate any business engaged in the sale, distribution, manufacture or storage of beer without first obtaining a permit from the city or county in which the business is located. The county issues permits only to businesses located in the unincorporated areas of the county; cities are responsible for issuance of permits to businesses located within any incorporated areas. T.C.A. §§ 57-5-105, 57-5-106. No city or county permit is required for a wholesaler unless the wholesaler operates a warehouse in the city or county. T.C.A. § 57-5-103. Selling, distributing, manufacturing, or storing beer without the required permit is a Class C misdemeanor. T.C.A. § 57-5-303. Sample Beer Permit

There are exceptions --

- (1) caterers licensed by the Alcoholic Beverage Commission, in accordance with T.C.A. § 57-4-101(i) and 57-4-203(i)(3), are authorized to sell beer and other alcoholic beverages in conjunction with their catering services;
- (2) retail liquor store owners licensed under T.C.A. § 57-3-204 are permitted to sell beer and other malt beverages without obtaining a beer permit from the county or city, and these beer sales are regulated by the ABC under T.C.A. § 57-3-404(e);
- (3) a beer permit is not required for the making of "homemade beer" when it is done in accordance with the provisions of T.C.A. § 57-5-111; and
- (4) under T.C.A. § 57-3-224, delivery services that deliver prepared food from restaurants may obtain a delivery service license issued by the ABC to deliver sealed packages of beer and alcoholic beverages; drivers must be licensed by the ABC under T.C.A. § 57-3-225.

Permits - To Whom Issued

Reference Number: CTAS-342

Beer permits are issued to the owner of the business or other entity responsible for the premises for which the permit is sought, whether a person, firm, corporation, joint-stock company, syndicate, association, or a local governmental entity when the governing body has authorized such sales of beer. A permit is valid only for the owner to whom it is issued, and it cannot be transferred to another owner. When the owner is a corporation, a change in ownership (necessitating a new permit) occurs when control of at least fifty percent (50%) of the stock of the corporation is transferred to a new owner. T.C.A. § 57-5-103(a). A beer permit does not transfer by corporate merger. Mapco Petroleum, Inc. v. Basden, 774 S.W.2d 598 (Tenn. 1989). Similarly, permits are valid only for the business operating under the name identified in the permit application. T.C.A. § 57-5-103(a)(2)(C). If the name of the business changes, a new permit must be obtained.

Permitted Location

Reference Number: CTAS-343

A permit is valid only for a single location, which includes all decks, patios, and other outdoor serving areas contiguous to the location. If an owner operates two or more restaurants or other businesses within the same building, the owner may, in the owner's discretion, operate some or all of the businesses under the same permit. Permits are not transferable from one location to another. T.C.A. § 57-5-103(a).

Under this statute, a beer permit issued for a clubhouse or restaurant on a golf course does not allow the permit holder to sell beer on the golf course itself because the golf course, while it may be contiguous, does not constitute an "outdoor serving area" within the meaning of the statute. Attorney General Opinion 01-117 (7/24/01).

A beer board could, in its discretion, issue an on-premises beer permit to a golf course, thereby allowing the sale of beer within the confines of the golf course property. Or, if a golf course clubhouse has been issued an off-premises permit, a patron could purchase beer in the clubhouse and take it onto the golf course to drink it. Also, a beer board may issue a permit to an applicant for an outdoor event that is not contiguous to the applicant's building. Attorney General Opinion 08-09 (1/18/08).

Beer permit holders may sell beer online for curbside pickup at the permit holder's location. The beer must be delivered to a vehicle located within a paved parking area adjacent to the permitted business, and the beer must be pulled from the retailer's inventory at the permitted location. The employee

delivering the beer to the vehicle must confirm that the individual receiving the beer is at least twenty-one (21) years of age. T.C.A. § 57-5-103(a).

On-Premises or Off-Premises Consumption

Reference Number: CTAS-344

A business may sell beer for both on-premises and off-premises consumption under the same permit. T.C.A. § 57-5-103(a)(5). However, a permit is not valid for on-premises consumption unless the application so states. T.C.A. § 57-5-105(b)(5). If a permit holder for either off-premises or on-premises consumption wishes to change the method of sale, the permit holder must apply for a new permit. T.C.A. § 57-5-105(c)(8).

Class A counties which have adopted distance rules cannot draw a distinction between on-premises consumption of beer as opposed to off-premises consumption in the calculation of the minimum footage requirements. Attorney General Opinions U93-74 (6/17/93) and 01 157 (10/25/01). However, cities and Class B (metropolitan government) counties may set different requirements for businesses selling beer for on-premises consumption versus those selling for off-premises consumption. See Attorney General Opinion 02-092 (8/28/02).

Microbreweries and Brew Pubs

Reference Number: CTAS-345

Under T.C.A. § 57-5-101(a), brewers and wholesalers are prohibited from having any interest in the retail beer business; a brewer cannot sell beer at retail or operate a restaurant at which it sells its own beer. However, an exception to this rule allows a manufacturer in any county in Tennessee who meets necessary federal, state, and local licensing requirements to operate as a retailer at or contiguous to the manufacturer's location for sales of not more than 25,000 barrels per year for consumption on or off the premises, in accordance with the provisions of T.C.A. § 57-5-101(c); Attorney General Opinion 00-087 (5/5/00).

A business engaged in the sale and manufacturing of beer must obtain a permit from the city or county in which the business is located. T.C.A. § 57-5-103. Also, note that beer falls within the definition of food as defined in T.C.A. § 53-1-102, and therefore manufacturing beer is subject to regulation by the Tennessee Department of Agriculture. Accordingly, these establishments must also obtain a food manufacturing license from the Department of Agriculture.

Temporary Beer Permits

Reference Number: CTAS-346

Temporary beer permits, not to exceed thirty (30) days, may be issued at the request of an applicant, upon the same conditions governing permanent permits. However, a temporary permit cannot be issued to authorize the sale, storage or manufacture of beer on publicly owned property (except in Class B counties and counties with a population over 300,000 by a bona fide charitable or nonprofit political organization with the approval of the appropriate governmental authority charged with the management of the property and the approval of the county beer board). T.C.A. § 57-5-105(g).

Beer Permit Application

Reference Number: CTAS-347

The owner of a business desiring to sell, distribute, manufacture or store beer in a Class A county outside the limits of any incorporated town or city must file an application for a permit with the county beer board. T.C.A. § 57-5-105. The application must be filed by the owner of the business, and it must contain the following information as set out in T.C.A. § 57-5-105(c):

1. Name of the applicant (the owner of the business);
2. Name of the business;
3. Location of the business by street address or other geographical description sufficient to determine conformity with applicable requirements;
4. If the applicant desires to sell beer at two or more restaurants or other businesses within the same building under the same permit, a description of each of the businesses;
5. All persons, firms, corporations, joint-stock companies, syndicates or associations having at

- least a five percent (5%) ownership interest in the applicant (owner of the business);
6. Identity and address of a representative to receive annual tax notices and any other communication from the county beer board;
 7. That no person, firm, joint-stock company, syndicate or association having at least a five percent (5%) interest in the applicant nor any person to be employed in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages or any crime involving moral turpitude within the past ten (10) years;
 8. Whether the applicant is applying for a permit which would allow the sale of beer for either on-premises consumption or for off-premises consumption, or both;
 9. Any other information as may reasonably be required by the county beer board.

Sample Beer Permit Application

An applicant (and a permit holder) is required to amend or supplement the application promptly if a change in circumstances occurs which would affect the responses given in the application. T.C.A. § 57-5-105(c)(9). Any applicant who makes a false statement in the application shall forfeit the applicant's permit and shall not be eligible for a permit for a period of ten (10) years. T.C.A. § 57-5-105(d).

In order to receive a permit, an applicant also must establish that:

1. No beer will be sold except at places where the sale will not cause congestion of traffic or interference with schools, churches, or other places of public gathering, or otherwise interfere with public health, safety and morals (and if the county legislative body has adopted a distance rule by resolution, that the business is not in violation of the rule). T.C.A. § 57-5-105(b)(1).
2. No sale will be made to minors. T.C.A. § 57-5-105(b)(2).
3. That no person, firm, corporation, joint-stock company, syndicate or association having at least a five percent (5%) ownership interest in the business has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance or controlled substance analogue, or any crime involving moral turpitude within the past ten (10) years. T.C.A. § 57-5-105(b)(3).
4. No person employed by the applicant in the distribution or sale of beer has been convicted of any violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance that is listed in Schedules I through V in title 39, chapter 17, part 4, or the manufacture, delivery, sale or possession with intent to manufacture, deliver or sell any controlled substance analogue, or any crime involving moral turpitude within the last 10 years. T.C.A. § 57-5-105(b)(4).
5. That no sales for on-premises consumption will be made unless the application so states. T.C.A. § 57-5-105(b)(5).

Crimes involving moral turpitude refer to acts of baseness, vileness, or depravity in the private and social duties which a person owes to other persons or to society in general, contrary to the accepted rules of right and duty. Brooks v. State, 187 Tenn. 67, 213 S.W.2d 7 (1948). Crimes of rolling high dice for a Coke and failing to immediately release 17 bluegills are not crimes involving moral turpitude. Gibson v. Ferguson, 562 S.W.2d 188 (Tenn. 1976). Driving under the influence (DUI) and reckless driving are not considered crimes of moral turpitude. Attorney General Opinions 95-37 (4/19/97) and 08-108 (5/14/08). The sale of beer to a minor or to a person not presenting proper identification is not a crime of moral turpitude. Attorney General Opinion 09-41 (3/25/09) (however, this would be a violation of the laws against possession, sale, manufacture, or transportation of beer or other alcoholic beverages). The offense of vehicular homicide, on the other hand, is a crime of moral turpitude. Attorney General Opinion 98 225 (12/1/98). In Opinion No. 08-108 (5/14/08), the Attorney General discusses the law on moral turpitude in detail and lists other behavior that has been held to constitute moral turpitude.

In addition to the requirements listed above, all beer permit holders are required to provide the county with documentation that they are duly registered with the Commissioner of Revenue for sales tax purposes. A new permit holder must provide this documentation within ten (10) days following approval of the permit. The required documentation is an actual copy of the registration certificate indicating that the purchase of beer is "for resale" by the beer permit holder. Permit holders are required to maintain a copy

of a valid resale certificate on file with the county. T.C.A. § 57-5-103. Persons engaging in the manufacture or wholesale distribution of beer are also required to register with the Commissioner of Revenue and receive a certificate of registration, which must be posted at the location prior to commencement of any business. T.C.A. § 57-5-102.

A 2015 amendment to T.C.A. § 57-5-103(a) provides that a beer permit cannot be issued to an applicant who has not been a citizen or lawful resident of the United States for at least one year immediately prior to the date of the application. However, the constitutionality of this provision has been called into question by the Tennessee Attorney General in Opinion No. 16-09 (3/4/16).

Application Fee for Beer Permit

Reference Number: CTAS-348

Each applicant is required to pay an application fee of \$250 to the county or city in which the business is located prior to consideration of an application to sell beer. No portion of this fee can be refunded to the applicant regardless of whether the application is approved or denied. T.C.A. § 57-5-104(a).

An annual privilege tax is imposed on the business of selling, distributing, storing or manufacturing beer in Tennessee in the amount of \$100 per year, which is due each January 1. At the time a new permit is issued, the permit holder is required to pay this tax on a prorated basis for each month or portion of a month remaining until the next payment date. T.C.A. § 57-5-104(b)(5).

Background Checks

Reference Number: CTAS-349

The beer board may wish to request background checks on applicants for a beer permit. Under T.C.A. § 57-5-103(e), a city or county is authorized to seek criminal history background or fingerprint checks on applicants for beer permits. These criminal background checks may include fingerprint checks against state and federal criminal records maintained by the Tennessee bureau of investigation and the federal bureau of investigation. The Tennessee bureau of investigation is authorized to assess fees for the searches in accordance with the fee schedule established by the bureaus. Also, criminal history information (intrastate) may be obtained from the Tennessee Bureau of Investigation for a fee of \$29.00 per name submitted, under T.C.A. § 38-6-120. Because no statutory authorization exists for requiring the applicant to pay these fees, the beer board cannot recover the fee from the applicant. Attorney General Opinion 97-077 (5/21/97).

Public Notice of Applications and Hearings

Reference Number: CTAS-351

Meetings at which the county beer board considers applications for permits must be public hearings at which members of the public and their attorneys are allowed to speak. T.C.A. § 57-5-105(f). Under the Open Meetings Act ("Sunshine Law"), adequate public notice of the meeting must be given. T.C.A. § 8-44-103. Before issuing a permit, the beer board is authorized to publish a notice in a newspaper of general circulation in the county stating the name of the applicant, the address of the location, whether the application is for on-premises or off-premises consumption, and the date and time of the meeting at which the application will be considered. T.C.A. § 57-5-105(f). The minutes of the meeting must be recorded and open to public inspection, and all votes of the beer board must be by public vote, public ballot, or roll call. T.C.A. § 8-44-104.

Denial of Beer Permits

Reference Number: CTAS-352

A beer permit application may be denied for failure of the applicant to meet the statutory requirements discussed above. While cities and Class B counties can impose additional restrictions under T.C.A. § 57-5-106, Class A counties are required to grant any application which meets the statutory requirements set out in T.C.A. § 57-5-105.

A beer board may not avoid issuing a permit by simply refusing to take action on the application. If a board needlessly prolongs an application for a permit by tabling it, the board has in effect denied the application and the applicant is entitled to seek judicial review. McCarter v. Goddard, 609 S.W.2d 505 (Tenn. 1980).

Counties may deny a permit if the issuance would interfere with public health, safety, and morals. T.C.A. § 57-5-105(b)(1). The case law which has developed on the issue of whether issuing a beer permit would interfere with the public health, safety, and morals of a community limits the discretion of the beer board

in most instances. A permit cannot be denied based on a generalized belief that the sale of beer is detrimental to the public health, safety and morals. For instance, it has been held that where all the requirements for issuance of a permit are met, a beer permit cannot be denied by a county beer board based on a board members' philosophy that:

the sale and consumption of beer destroys the home, creates poverty and misery, dethrones reason, defiles innocence, - yea, literally takes the bread from the mouths of little children, and topples men and women from the pinnacles of righteousness and gracious living into the bottomless pits of degradation and despair, shame and helplessness and hopelessness. Coffman v. Hammer, 548 S.W.2d 310, 312 (Tenn. 1977).

The record must contain factual evidence showing how or why the particular permit would interfere with public, health, safety, or morals. The expression of fears, speculation, and apprehension of witnesses who appear to have a fixed opinion that sale of beer is harmful and immoral per se is immaterial. Harvey v. Rhea County Beer Board, 563 S.W.2d 790 (Tenn. 1978).

On the issue of safety, the Tennessee Supreme Court has found that in order for traffic congestion to constitute a valid basis for denying a permit to sell beer in the package, it must be shown that the issuance of the beer permit would cause traffic to be more congested and more hazardous than it was prior to the issuance of the beer permit. Hinkle v. Montgomery, 596 S.W.2d 800 (Tenn. 1980). This rule makes it difficult for a beer board to deny a permit based on traffic hazard, especially with existing establishments.

The court has found that there is no difference, in principle, between the purchase of a six-pack of beer to go and the purchase of a six-pack of a non-alcoholic beverage as "in each case the purchaser comes, he buys and he goes." Concerns about increased littering are also not enough to deny a beer permit as the court has found that alcoholic beverages do not cause any more littering problems than non-alcoholic beverages. Coffman, at page 312. Concerns that young people congregate in and about the establishment have also been found insufficient to deny a permit to a convenience store. Ashley v. Bryant, 1989 WL 145886 (Tenn. Dec. 4, 1989).

Insufficient evidence of detriment to public health, safety, and morals was found in Al Koshshi v. Memphis Alcohol Commission, 2005 WL 1692947 (Tenn. Ct. App. 2005). In that case the beer board had based its denial on the business being in the vicinity of neighborhood schools, its location at a busy intersection, and problems with littering, loitering, and prostitution, but the court found that there was not enough evidence to deny the permit on these grounds.

Title deficiencies also are not a legitimate concern of beer boards. If an applicant for a beer permit leases a premises knowing that there is a restrictive covenant precluding the sale of alcoholic beverages, then this is a matter that addresses itself solely to the applicant's judgment and discretion and as to which the beer board has no concern. Lones v. Blount County Beer Board, 538 S.W.2d 386, 390 (Tenn. 1976).

However, where an applicant had a record for violation of laws relating to the sale of beer and the gambling laws and her husband had a serious drinking problem, granting her a permit to sell beer at an establishment 35 miles from the nearest police authority was found to have been detrimental to the public health, safety and morals of those living in the community and was sufficient grounds to refuse the permit. Tippit v. Obion County, 651 S.W.2d 211 (Tenn. 1983).

Although a building itself cannot have a "bad reputation," the reputation and past history of persons proposing to operate the business is of legitimate concern, and the proposed site itself may be unsuitable. Where a site was found to have been plagued with constant complaints of fighting and other disorderly conduct, and was located in an unpatrolled, remote, rural area sixteen miles from the sheriff's office, the beer board could deny a permit based on the public health, safety and welfare of the county. Lynn v. Blue, 1998 WL 730191 (Tenn. App. Oct. 21, 1998).

The sale of beer at a market in which there is a gun shop has been found to interfere with the public health, safety and morals of a community. In Gibbs v. Blount County Beer Board, 664 S.W.2d 68 (Tenn. 1984), the court found that the general public could not distinguish between persons carrying weapons for unlawful purposes, from those persons coming into the store to have a weapon repaired. However, after this case was decided the General Assembly repealed T.C.A. § 39-17-1305 and made it lawful for a person with a handgun carry permit to possess a handgun in a place where alcoholic beverages are sold if the person is not consuming alcoholic beverages. Accordingly, the validity of this case is uncertain under current law.

The court found sufficient evidence of detriment to public health, safety, and morals to justify denial of a beer permit in Suleiman v. City of Memphis, 290 S.W.3d 844 (Tenn. Ct. App. 2008). In this case specific instances directly related to the applicant and the market in question, rather than generalized fears, were presented as evidence.

Permits may be denied for violation of any distance rules which have been validly adopted by resolution of the county legislative body. T.C.A. §§ 57-5-105(b)(1) and 57-5-105(i). However, before a permit may be denied for violation of a 300' rule for proximity to a residential dwelling, the owner of the residential dwelling must appear in person before the beer board and object to the issuance of the permit. T.C.A. § 57-5-105(i).

If a beer permit is denied based on the testimony of a person at a hearing, the beer board is required to notify the person who testified if the applicant applies for a permit again at the same location within 12 months. The person who testified may submit the person's remarks in writing to the beer board at any additional hearing, in lieu of making a personal appearance. T.C.A. § 57-5-105(k).

If a permit application is denied three times, the applicant may not reapply for a permit on the same premises until one year from the date of the third refusal, and only if the circumstances have substantially changed. T.C.A. § 57-5-105(h). An applicant who makes a false statement on the application must forfeit his or her permit and is ineligible to receive a permit for ten (10) years. T.C.A. § 57-5-105(d).

Expiration/Termination of Beer Permits

Reference Number: CTAS-442

A beer permit has no expiration date, and counties and cities are prohibited from requiring periodic permit renewals. T.C.A. § 57-5-103(a)(9). A beer permit expires upon termination of the business, change in ownership, relocation of the business, or change in the name of the business. A permit holder is required to return the permit to the county or city that issued it within fifteen days of the occurrence of one of these events, but the permit expires regardless of whether the permit is returned. T.C.A. § 57-5-103(a)(6). Unless one of these events occurs, a beer permit is valid until suspended or revoked in accordance with T.C.A. § 57-5-108.

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