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Denial of Beer Permits

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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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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).

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