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STATE OF ALABAMA

FEB 10 1989

Honorable Ernest Willingham  
Mayor  
Town of Collinsville  
Drawer N  
Collinsville, AL 35961

Alcoholic Beverages - Alcoholic  
Beverage Control Law - Minors

From the language of Code of Alabama 1975, § 28-1-5, which expressly prohibits any person under the age of twenty-one from purchasing, consuming, possessing or transporting alcoholic beverages within the state, the legislature implicitly repealed that portion of § 28-4-200 which provides that any person nineteen years of age or over may legally possess specified amounts of alcoholic beverages in dry county in the state.

The age of twenty-one should be substituted for age nineteen in § 28-4-200.

Dear Mayor Willingham:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

While Code of Alabama 1975, § 28-4-200 provides that in dry counties any person nineteen years of age or over shall be

entitled to possess alcoholic beverages in specified places and amounts, this appears to conflict with Code of Alabama 1975, § 28-1-5, which states that it shall be unlawful for a person under the age of twenty-one to possess alcoholic beverages in the state. Please advise us as to which code section governs the purchase and possession of alcoholic beverages.

FACTS AND ANALYSIS

Code of Alabama 1975, § 28-1-5 provides in pertinent part:

"Notwithstanding the provisions of section 26-1-1, it shall be unlawful for a person less than 21 years of age to purchase, consume, possess or transport any alcohol, liquor or malt or brewed beverages within the state of Alabama."

The effective date of § 28-1-5 was May 29, 1985. Code of Alabama 1975, § 26-1-1 merely provides that the age of majority in this state is nineteen years.

Code of Alabama 1975, § 28-4-200 provides:

"Any person 19 years of age or over shall be entitled to have in his possession in his motor vehicle or a private residence or place of private residence or the curtilage thereof in any dry county in this state for his own private use and not for resale not more than the following quantity of alcoholic beverages, as enumerated and defined in section 28-3-1, when such beverages have been sold or distributed by and through a state liquor store operated by the Alabama alcoholic beverage control board or a licensee of such board, and the containers of such beverages have affixed thereto such mark or identification and sufficient revenue stamps as to show that such alcoholic beverages were sold or distributed by a state liquor store or a licensee of the Alabama alcoholic beverage control board and that the required tax has

been paid: three quarts of liquor and one case of malt or brewed beverages or three quarts of wine and one case of malt or brewed beverages; provided, however, that no alcoholic beverages shall be kept, stored or possessed in the passenger area of any vehicle or in the view of any passenger."

It is the opinion of this office that that part of § 28-4-200 which reads "[a]ny person 19 years of age or over" was implicitly repealed by the passage of § 28-1-5 and § 28-4-200 should now read, "[a]ny person 21 years of age or over ..."

The doctrine of repeal by implication is succinctly stated in 73 Am.Jur.2d, p. 510, §§ 392-397, as follows:

"The fact that an act does not contain either a general or specific repealing clause does not prevent its repealing a prior act. Thus, an act may be repealed by implication as well as by express terms. A portion of a statute may also be repealed by implication. The doctrine of repeal by implication rests on the ground that the last expression of the legislative will ought to control. The implication of a repeal, in order to be operative, must be necessary, or necessarily follow from the language used, because the last statute admits of no other reasonable construction." [Footnotes omitted]

Moreover, the courts of this state have held that although the doctrine of repeal by implication is not favored, when two laws are so repugnant or in conflict with each other, it must be presumed that the latter should repeal the former. See City of Tuscaloosa v. Alabama Retail Association, 466 So.2d 103 (Ala.1985); Merrell v. City of Huntsville, 460 So.2d 1248 (Ala.1984).

In enacting § 28-1-5, the legislature expressly prohibited any one under the age of twenty-one from purchasing, consuming, possessing or transporting alcoholic beverages within the State of Alabama. If a person under the age of twenty-one is prohibited from buying, drinking, possessing or transporting alcoholic beverages in the state, then it necessarily follows that the age of twenty-one is the controlling age in any county in this state, be it wet or dry.

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We therefore hold that the age of nineteen years found in § 28-4-200 was implicitly repealed by the enactment of § 28-1-5 and that the age of twenty-one is the minimum age at which alcoholic beverages may be legally purchased, consumed, possessed or transported in the state.

CONCLUSION

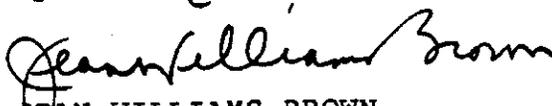
From the language of Code of Alabama 1975, § 28-1-5, which expressly prohibits any person less than twenty-one years of age from purchasing, consuming, possessing or transporting alcoholic beverages within the state, the legislature implicitly repealed that portion of § 28-4-200 which provides that any person nineteen years of age or over may legally possess specified amounts of alcoholic beverages in a dry county in the state.

The age of twenty-one should therefore be substituted for age nineteen in § 28-4-200.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN  
Attorney General  
By:

  
JEAN WILLIAMS BROWN  
Assistant Attorney General

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