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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
ATTORNEY GENERAL

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ALABAMA STATE HOUSE  
11 SOUTH UNION STREET  
MONTGOMERY, AL 36130  
(334) 242-7300  
WWW.AGO.STATE.AL.US

Honorable Claud E. McCoy, Jr.  
Chambers County Attorney  
117 North Lanier Avenue, Suite 201  
Lanett, Alabama 36863

Alcoholic Beverages - Beer - Referendum  
Election - Sales

The method for determining whether draft or keg beer may be sold and distributed in Chambers County must begin with legislation authorizing the same, except that current law would allow a civic center authority in Chambers County to be permitted to sell draft or keg beer, for consumption in the civic center, without further legislation.

Dear Mr. McCoy:

This opinion of the Attorney General is issued in response to your request on behalf of the Chambers County Commission.

QUESTIONS

1. Can the petition method authorized pursuant to section 28-2-1 of the Code of Alabama be employed to call for a vote of the people solely on the draft/keg beer issue, or is this statute limited only to the issue of whether a county shall become a wet or dry county?
2. Under the current legislation existing for Chambers County, can draft beer and keg beer be sold in Chambers County?
3. Is there any statutory method in which the sale of draft and keg beer in Chambers County can be

brought to a vote of the people of Chambers County absent local legislation authorizing same?

4. Have any other counties in the state been authorized to sell draft/keg beer without local legislation? And, if so, what counties, and how was this accomplished?

5. Section 28-3A-23(h) of the Code of Alabama states that "draft or keg beer may be sold or dispensed within this state within those counties in which and in the manner in which the sale of draft or keg beer was authorized by law on September 30, 1980 or in which the sale of draft beer or keg beer is hereafter authorized by law." What law authorized this sale, and what counties were entitled to sell thereby?

#### FACTS AND ANALYSIS

The Alabama Beverage Control Act (1937 Ala. Acts No. 66, 40, Ex. Sess.) was passed on February 2, 1937. Section 51 of that act provided for an initial election to be held in each county in Alabama on March 10, 1937, to determine whether alcoholic beverages could be legally sold and distributed in the county. That section contained a further provision that subsequently would allow any county to change from dry to wet or wet to dry through a petition method that would result in an election on the question, "[d]o you favor the legal sale and distribution of Alcoholic Beverages within this County? Yes . . . . No . . . ." *Id.* at 82. This is exactly the same petition method and exactly the same question that currently are contained in section 28-2-1 of the Code to which your first question refers. On its face, this provision addresses only the question of whether a county will be wet or dry. It does not address draft or keg beer.

Section 23(c) of the Alabama Beverage Control Act contained the provision that "[t]here shall be no draft or keg beer or malt beverages sold or dispensed within this State." *Id.* at 63. It then provided, as follows, a single exception:

[P]rovided, however, in rural communities with a predominant foreign population, after payment of the tax imposed by this Act, draft or keg beer may be sold or dispensed by special permit from the Board, when in the judgment of the Board, the use and consumption of draft

or keg beer is in accordance with the habit and customs of the people of any such rural community.

*Id.* at 63.

Three years after the act was passed, Attorney General Thomas S. Lawson issued an opinion stating, among other things, as follows:

[I]t can be seen that the intention of said provisions [of Section 23(c)] was to prevent the sale of beer from barrels or kegs . . . which the Legislature, no doubt, thought would tend to the creation of a saloon atmosphere, whereas, one of the purposes of the act is to prohibit forever the open saloon and to prevent the return of the saloon atmosphere.

Opinion of the Attorney General to Honorable Wilbur L. DeVan, Administrator, Alabama Alcoholic Beverage Control Board, issued July 3, 1940.

In other words, other than the one exception contained in Section 23(c), quoted above, none of the wording contained in the original Alabama Beverage Control Act was intended to allow the sale or distribution of draft or keg beer. The quoted provisions of the original Section 23(c) were retained in the 1940 Code of Alabama and the 1975 Code of Alabama.

In 1973, the Alabama Legislature added a second exception to the general prohibition by authorizing the Alcoholic Beverage Control Board ("ABC Board"), in its discretion, to give permits to civic center authorities. 1973 Ala. Acts No. 642, 952. In 1980, the Alabama Legislature passed Act 80-529, effective at midnight on September 30, 1980, which, among other things, provided that the sale of draft or keg beer would continue where it was already being sold and where "the sale of draft or keg beer is hereafter authorized *by law*." 1980 Ala. Acts No. 80-529, 806, 823 (emphasis added). These provisions are found in section 28-3A-23(h) of the Code.

Thus, beginning October 1, 1980, the state law still contained a general prohibition of the sale and distribution of draft or keg beer, it contained two exceptions authorizing permits to be given by the ABC Board, and it recognized that such sales also might be authorized by the passage of laws in the future. In practice, such laws have been created using local acts rather than a general act. The local acts may differ in the processes that they authorize (e.g., they may simply provide for the sale of draft or keg beer; they may authorize the local government to

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decide; they may provide for a referendum, etc.) but the process is started by an act of the Legislature. Research reveals no local legislation authorizing the sale of draft or keg beer in Chambers County.

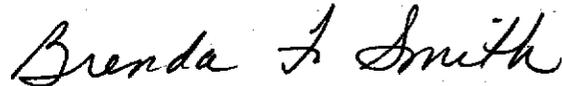
CONCLUSION

The method for determining whether draft or keg beer may be sold and distributed in Chambers County must begin with legislation authorizing the same, except that current law would allow a civic center authority in Chambers County to be permitted to sell draft or keg beer, for consumption in the civic center, without further legislation.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Robert S. Hill, Legal Division, Alcoholic Beverage Control Board.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

TK/RSH

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