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Honorable Craig Ford
Member, House of Representatives
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Alcoholic Beverage Licensing Code -
Licenses and Permits - Private Clubs -
Restaurants - Etowah County

The provisions of the Alcoholic Beverage Licensing Code do not authorize the Alcoholic Beverage Control Board to issue one type of retail liquor license to a single licensee at one premise to be effective six days a week and a separate type of retail liquor license to be effective only one day a week.

Dear Representative Ford:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Does the language of section 28-3A-23(e) of the Code of Alabama, or that of any other provision of the Alcoholic Beverage Licensing Code, authorize the Alabama Alcoholic Beverage Control Board ("ABC Board") to issue one type of retail liquor license to a single licensee at one business location effective for six days per week and to issue a separate retail liquor license that would permit alcoholic beverage sales on Sundays, effective only on Sundays?

FACTS AND ANALYSIS

Section 28-3A-23(e) of the Code of Alabama provides as follows:

Any retailer may be granted licenses to maintain, operate or conduct any number of places for the sale of alcoholic beverages, but a separate license must be secured for each place where alcoholic beverages are sold. No retail license issued under this code shall be used for more than one premise, nor for separate types of operation on the same premise. Each premise must have a separate retail license. Where more than one retail operation is located in the same building, each such operation under a separate or different ownership is required to obtain a separate retail license; and where more than one type of retail operation located within the same building is operated by the same licensee, such licensee must have a license for each type of retail operation. Provided, there shall be no licenses issued by the board for the sale of liquor, beer, or wine by rolling stores.

ALA. CODE § 28-3A-23(e) (2003).

The context in which "premise" or "licensed premise" is used throughout chapter 3A of title 28, which is known as the Alcoholic Beverage Licensing Code, indicates that "premise" refers to the specific area that is licensed in connection with the sale of alcoholic beverages. The first three sentences of section 28-3A-23(e) provide that each such area must have a separate license and that no license will allow more than one type of operation in the same area. (The types of licenses, with descriptions of the related operations, are set forth in chapter 3A).

The fourth sentence in section 28-3A-23(e) uses the word "building" instead of "premise." It provides for situations in which there is more than one licensed premise within the same building or structure. For example, a building that houses a hotel may contain one or more restaurants and one or more lounges, each being a separate licensed premise.

Section 28-3A-3(c), in the Alcoholic Beverages Licensing Code, states as follows:

Licenses issued under this chapter shall, unless revoked or suspended in the manner provided in this chapter, be *valid for the license year* which shall begin

on the first day of October of each year, unless otherwise established by this chapter or by the board. Licenses may be issued at any time during the year.

ALA. CODE § 28-3A-3(c) (2003) (emphasis added).

Section 28-3A-5(c) provides, in part, that “[u]nless previously revoked, every license issued by the board under this chapter shall expire, and terminate on the thirtieth day of September in the year or on the last day of the month ending *the license year* established by this chapter or by the board *for which the license is issued.*” ALA. CODE § 28-3A-5(c) (2003) (emphasis added).

Section 28-3A-19 provides for a special retail license that shall be issued for a “period of time not to exceed one year. . . .” ALA. CODE § 28-3A-19 (2003). Section 28-3A-20 provides for a special events retail license to be issued “for a period not to exceed seven days. . . .” ALA. CODE § 28-3A-20 (2003). The sections in chapter 3A describing other types of licenses do not contain provisions for a specific period of time. The wording of chapter 3A clearly anticipates that these other types of licenses will be effective for the entire license year. The wording also anticipates that, whether issued for the license year or for a shorter period in the case of the two special licenses referred to above, the licenses are effective for a continuous period and not intermittently, such as only a portion of each week.

Although chapter 3A neither specifically authorizes nor specifically prohibits the issuance of more than one type of retail license for the sale of alcoholic beverages to one licensee at the same location, it would seem clear that, by definition, some types of licenses could not be used by one licensee at the same premises at the same time. For example, a restaurant retail liquor license (section 28-3A-13) allows the sale of alcoholic beverages in a premise that is open to the public without restriction as to the age. A lounge retail liquor license (section 28-3A-11) allows such sale on a premise that is open to the public only for those 19 years of age or older. A club retail liquor license (section 28-3A-12) only allows sale of alcoholic beverages on a premise that is not open to the public, but is restricted to members and their guests. These three licenses clearly are inconsistent with each other. No two of them can be issued effective for the same licensee at the same premise at the same time.

CONCLUSION

The provisions of the Alcoholic Beverage Licensing Code do not authorize the ABC Board to issue one type of retail liquor license to a single licensee at one premise to be effective six days a week and a separate type of retail liquor license to be effective only one day a week.

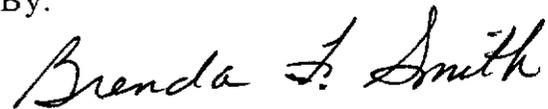
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I hope this opinion answers your question. If this Office can be of further assistance, please contact me.

Sincerely,

TROY KING
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

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