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STATE OF ALABAMA
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Privilege License Taxes – Alcoholic
Beverage Licensing Code – Counties

Section 28-3A-21 of the Code of Alabama does not authorize a dry county to fix and levy privileges or license taxes on businesses that hold state licenses to sell alcoholic beverages and that are within the municipal limits of a wet city located within the dry county.

Dear Mr. Porter:

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

QUESTION

Does section 28-3A-21 of the Code of Alabama authorize a dry county to fix and levy privileges or license taxes on businesses that hold state licenses to sell alcoholic beverages and that are in a wet city located within the dry county?

FACTS AND ANALYSIS

Section 28-3A-21 of the Code of Alabama sets fees to be charged by the Alabama Alcoholic Beverage Control Board in connection with the various licenses it may issue for the sale of alcoholic beverages. That section then provides that, in addition, "any county or municipality in which the sale of alcoholic beverages is permitted shall be authorized to fix and levy privileges or license taxes" on those state licenses. ALA. CODE § 28-3A-21(c) (2003). That

Code section was enacted into law in section 21 of Act 80-529. The title for that act begins as follows: "To be known as the Alcoholic Beverage Licensing Code; to further regulate and control alcoholic beverage transactions in *wet* counties in Alabama under the control and supervision of the alcoholic beverage control board; . . ." 1980 Ala. Acts No. 80-529, 806 (emphasis added). Section 2(y) of that same act defines "wet county" as "[a]ny county which by a majority of those voting voted in the affirmative" in an election or special method referendum held in accordance with applicable statutes. 1980 Ala. Acts No. 80-529, 809.

The title is an integral and important part of an act. Section 45 of the Alabama Constitution requires that "[e]ach law shall contain but one subject, which shall be clearly expressed in its title. . . ." ALA. CONST. art. IV, § 45. The title must provide information apprising the public and the Legislature of the subject of the body of the bill.

"The purpose of § 45 is to prevent fraud upon the legislature and the people of this state, and the test for whether a statute violates § 45 gives effect to those purposes. The question to be addressed in determining the constitutionality of an act under § 45 is: Whether the title of the act 'is so misleading and uncertain that the average legislator or person reading the same would not be informed of the purpose of the enactment.' *Pillans v. Hancock*, 203 Ala. 570, 840 So. 757 (1919); *Opinion of the Justices*, 294 Ala. 571, 319 So. 2d 699 (1975)."

McGlothren v. Eastern Shore Fam. Practice, 742 So. 2d 173, 176-77 (Ala. 1999), quoting *Ala. Educ. Ass'n v. Grayson*, 382 So. 2d 501, 505. The title of Act 80-529 states the intent that the act – and thus the portion of the act that is now section 28-3A-21 of the Code of Alabama – addresses only wet counties. Thus, the phrase "any county . . . in which the sale of alcoholic beverages is permitted . . ." refers to wet counties – counties that permit the sale of alcoholic beverages.

CONCLUSION

Section 28-3A-21 of the Code of Alabama does not authorize a dry county to fix and levy privileges or license taxes on businesses that hold state licenses to sell alcoholic beverages and that are within the municipal limits of a wet city located within the dry county.

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

Sincerely,

TROY KING
Attorney General

By:

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

BRENDA F. SMITH
Chief, Opinions Division

TK/BH

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