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Regulation of Alcoholic Beverages

Regulation of alcoholic beverages is a task undertaken by the state, counties and municipalities. This article summarizes the regulatory powers of Alabama municipalities as to alcoholic beverages.

Municipal Option

Sections 28-2A-1 through 28-2A-4, Code of Alabama 1975, give municipalities of 1,000 or more in population the authority to hold a referendum on the question of legalizing sales of alcoholic beverages within the municipal limits. The municipal governing body must call such an election when a petition, signed by 30 percent of the number of voters who voted in the last preceding general election of the municipality, is filed with the municipal clerk. A municipal option election can be held by municipalities located in dry as well as in wet counties. If a majority of those persons casting ballots in such an election vote "wet," the sale of alcoholic beverages will be allowed in the municipal corporate limits. Each subsequent municipal option election must follow the petition process with a new petition.

A period of not less than 720 days must elapse between the dates of municipal option elections. A municipal council must give three weeks' notice prior to the holding of a wet/dry referendum. AGO 1997-0022.

The Attorney General has determined that if a city located in a wet county expands into a dry county, the newly annexed property within the dry county will remain dry. The primary rationale for this is that the city is only wet by virtue of the fact that it is located in a wet county, not because it has exercised its municipal option to elect to become wet. The sale and distribution of alcoholic beverages on the newly annexed land is governed by the county's wet/dry election. AGO 2002-0197. This opinion is inapplicable to Class 1, 2, and 3 municipalities, and any municipalities with a population of 18,500 or more, who follow the procedure outlined in Section 28-2A-20 of the Code of Alabama 1975. Section 28-2A-20 provides that the governing body of any Class 1, 2, or 3 municipality or any municipality having a population of 18,500 or more, which is legally wet and which has previously annexed or is annexing territory located in a dry county, shall pass an ordinance calling for a city-wide referendum to determine whether the annexed portions of the municipality shall be wet. If the referendum fails, the annexed portions located in the dry county shall remain dry but the failed referendum shall have no effect on the wet portions of the municipality.

A municipality does not have to prove its population by decennial census to hold a wet/dry referendum. *Dennis v. Pendley*, 518 So.2d 688 (Ala. 1987). See also, *Bridgeport v. Citizens Action Committee,* 571 So.2d 1089 (Ala. Civ. App. 1990).

Dry Counties and Municipalities

In counties and in municipalities where the sale of alcoholic beverages has not been approved by voters in either a countywide or municipal option election, alcoholic beverages may not be legally sold. However, possession of limited quantities of alcoholic beverages in dry counties is allowed.

Section 28-4-200, Code of Alabama 1975, allows any person 19 years of age or older to have in his or her possession, in his or her motor vehicle or a private residence or place of private residence or the curtilage thereof, in any dry county, for his or her own private use and not for resale, not more than 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 that no alcoholic beverages shall be kept, stored or possessed in the passenger area of any vehicle or in view of any passenger. All such containers must have affixed thereto a mark and tax stamp showing they were purchased from an ABC Board store or licensee and that the proper Alabama taxes have been paid.

Basis of State Regulation

Alabama is termed a "monopoly state" with respect to the control of alcoholic beverages. State statutes relating to the regulation of liquor, wine and beer are found in Title 28, Code of Alabama 1975, as amended. Section 28-3-2 of the Code

sets out the general purposes of these statutes which regulate alcoholic beverages. It reads, in part, as follows:

> "(b) Except as otherwise expressly provided in this chapter, the purpose of this chapter is to prohibit transactions in liquor and alcohol and malt or brewed beverages, which take place wholly within the state, except by and under the control of the board, as specifically provided in this chapter, and every section and provision of this chapter shall be construed accordingly. The provisions of this chapter, through the instrumentality of the board, and otherwise, provide the means by which such control shall be made effective ..."

Section 28-3-40, Code of Alabama 1975, provides that the board (which means the Alcoholic Beverage Control Board) shall consist of three individuals who are appointed by and serve at the pleasure of the governor. The statute also provides that the office of the board shall be in Montgomery.

The Alabama Supreme Court, in *State v. Murphy,* 237 Ala. 332, 186 So. 487 (1939), upheld the constitutionality of the Alabama Alcoholic Beverage Control Act (General Acts, Extra Session, 1936-37, p. 40). In *Tarrant v. Birmingham,* 39 Ala. App. 55, 93 So.2d 925 (Ala. App. 1957), the court stated: "Traffic in intoxicating beverages is universally recognized as a proper subject of police regulation," and noted that the act, in Section 28-3-2, Code of Alabama 1975, provides in part that the "chapter shall be deemed an exercise of the police power of the State of Alabama for protection of the public welfare, health, peace and morals of the people of the state ..." In *Ex parte Alabama Alcoholic Beverage Control Board*, 683 So.2d 952 (1996), the Alabama Supreme Court upheld the right of the state to operate liquor stores.

State Licensing Code

Chapter 3A of Title 28, Code of Alabama 1975, gives the ABC Board the power to issue and renew licenses to reputable and responsible persons subject to the provisions of the licensing code and the regulations promulgated. The board is authorized to license retailers, wholesalers, importers, manufacturers and others. Any such licenses may not be issued in dry counties where traffic in alcoholic beverages is not authorized by law. The board is given broad discretionary powers in acting upon license applications. The application procedures are covered in Section 28-3A-4 while the procedures for issuance are covered in Section 28-3A-5, Code of Alabama 1975.

The ABC licensing code, codified at Chapter 3A of Title 28 of the Code of Alabama 1975, lists numerous licenses which may be issued by the state ABC Board to retailers, importers, wholesalers and manufacturers of alcoholic beverages.

A. Lounge Retail Liquor License (Section 28-3A-11)

Two types of retail lounge liquor licenses are established by ABC Board regulation. A **Class I License** allows the licensee to sell alcoholic beverages for both on-premises and off-premises consumption. A **Class II License** allows the licensee to sell alcoholic beverages only for off-premises consumption. A Class II licensee may not sell for on-premises consumption. These are the so-called "package stores." All sales for off-premises consumption are required to be in original unopened containers. If the licensee is to be located within the corporate limits or police jurisdiction of a municipality, the ABC Board can only grant the license upon approval of the governing body of the municipality. Such licensees may permit dancing or provide other lawful entertainment on the licensed premises. No person under 21 years of age shall be admitted to such licensed premises as a patron or employee.

In *Montgomery v. Glenn*, 749 So.2d 478 (1999), the Alabama Court of Civil Appeals held the city's denial of an applicant's first application for a Class 1 lounge liquor license did not have a res judicata effect on the second application. The court further held that the city carried the burden of proving that the denial of the application was supported by evidence.

B. Club Retail Liquor License (Section 28-3A-12)

The holder of a club license under Section 28-3A-12 may sell alcoholic beverages for on-premises consumption seven days per week and for off-premises consumption on all days except Sunday. *Historic Warehouse, Inc. v. ABC Board*, 423 So.2d 211 (Ala. 1982). These licensees may sell liquor, wine and beer, including draft or keg beer in any county or municipality in which sale is permitted. Club licenses shall only be granted by the ABC Board upon approval of the governing body of the municipality in whose corporate limits or police jurisdiction the club is to be located.

C. Restaurant Retail Liquor License (Section 28-3A-13)

This type of license may be issued to hotels, restaurants, civic center authorities or dinner theaters. It permits the sale of liquor, wine and beer, including draft or keg beer, in any county or municipality in which the sale thereof is permitted, in that part of the hotel, restaurant or dinner theater set out in the license. The license permits the sale of alcoholic beverages to patrons, guests or members for on-premises consumption in any part of the civic center or in that part of the hotel, restaurant, or dinner theater habitually used for serving meals to patrons, guests or members, or other public or private rooms of the

building. If a restaurant located in a hotel, but not operated by the owner of the hotel, is licensed to sell alcoholic beverages in the restaurant, it may also sell alcoholic beverages to guests in private rooms in the hotel. This license also permits a licensee to apply for and be issued a delivery service license that authorizes the licensee to deliver, along with the purchase of a meal, beer, wine, or spirits from the retailer's premises. These licenses may only be issued by the ABC Board upon approval by the municipal governing body.

D. Delivery Services (Section 28-3A-13.1)

This license permits any entity licensed by the state ABC board for off-premises consumption, restaurant licensee of the board, or valid and responsible organization of good reputation that is registered to do business in the state to apply for and be issued a delivery service license. A delivery service licensee may deliver, or contract with any retailer in the state for the delivery of, beer, wine, or spirits from a retail premises to an individual in the state who is at least 21 years of age, for personal use by that individual only, and not for resale. A delivery service licensee may facilitate orders for the sale and delivery of beer, wine, or spirits by telephone, Internet, or by other electronic means.

E. Curbside Pick-up or Takeout Services (Section 28-3A-2)

Any entity licensed by the state ABC board for on or off-premises consumption, or both, may sell alcoholic beverages, for off-premises consumption only, using curbside pick-up or takeout services. All alcoholic beverages sold curbside must be in sealed, unopened containers and as follows:

1. Liquor may be sold in any size container, provided the total amount of liquor sold may not exceed 9,000ml per customer in any singe 24-hour period, except restaurant licensees' liquor sales may not exceed 375ml per customer and must be accompanied by a food order.
2. Table wine may be sold in any size container, provided the total amount of table wine sold may not exceed 9000ml or the equivalent of twelve 750ml bottles of table wine per customer.
3. Beer, with the exception of draft beer, may be sold in any packaging and in any size container, provided the total amount of beer sold may not exceed 120 12oz containers of beer per customer.
4. Draft beer may be sold only in areas where draft beer sales are authorized and sealing requirements are met, provided the total amount of draft beer sold may not exceed 288oz per customer.
5. Any employee handling alcoholic beverages for pick-up or takeout order must be 21 years of age or older and must verify that the recipient is 21 years of age or older.

F. Retail Table Wine License For On-Premises and Off-Premises Consumption (Section 28-3A-14)

This license permits the sale of table wine for on-premises and off-premises consumption. This license does not have to be approved by the municipal governing body, but it is subject to the municipality's zoning ordinances or any other ordinances passed through the valid exercise of the police powers of the city or town. The ABC Board may submit all applications for this license to the affected municipality for its comments.

G. Retail Table Wine License for Off-Premises Consumption (Section 28-3A-15).

This license allows the holder to sell table wine in its original unopened container for off-premises consumption only. Municipal governing body approval is not required, but the board may submit the application to the city or town for comments.

Municipal zoning and police power ordinances are applicable to such licenses.

H. Retail Beer License for On-Premises and Off-Premises Consumption (Section 28-3A-16).

This license permits the sale of beer, including draft beer in counties or municipalities where the sale thereof is permitted, for on-premises and off-premises consumption. This license does not have to be approved by the municipal governing body but is subject to valid zoning and police power ordinances of the municipality. The ABC Board may submit applications to the municipality affected for its comments.

I. Retail Beer Licenses for Off-Premises Consumption (Section 28-3A-17).

This license permits the sale of beer, including draft or keg beer in counties or municipalities where the sale thereof is permitted, in its original unopened container for off-premises consumption only. This license does not have to be approved by the municipal governing body, but is subject to valid zoning and police power ordinances of the municipality. The ABC Board may submit applications of this type of license to the municipality for its comments.

Any of the above provisions of the law notwithstanding, the ABC Board shall not have the authority to issue any form of license in a Class 1 or Class 2 municipality without first gaining the consent of the governing body of the municipality. Section 28-1-6, Code of Alabama 1975. Section 28-1-7 addresses when the ABC Board can issue a license in Class 4 municipalities organized pursuant to Section 11-44B-1, Code of Alabama 1975.

In addition to these retail licenses, the licensing code gives the board the authority to issue licenses to manufacturers, wholesalers and importers as well as special retail or special events licenses. Section 28-3A-21, Code of Alabama 1975, levies the fee that each licensee is required to pay the state. The section provides that in addition to the state license taxes, any county or municipality in which the sale of alcoholic beverages is permitted shall be authorized to fix and levy privilege or license taxes on any of the foregoing licensees located or operating therein, conditioned on a permit being issued by the ABC Board. A city cannot levy any license or a tax of any nature on a state liquor store. However, in AGO 1989-0260, the Attorney General ruled that a municipality may levy a license fee upon a state park lodge located within its jurisdiction.

J. Regulations Pertaining to Licensees

Section 28-3A-23, Code of Alabama 1975, sets out regulations pertaining to licensees. Every license shall be constantly and conspicuously displayed on the licensed premises. The municipal governing body must approve the license application if the retailer is located in the municipality. Even though one person owns several premises, a license must be acquired for each place of business. Also, a license must be issued for each type of operation conducted on the same premises. Alcoholic beverages can only be sold for consumption on the premises in rooms accessible to the general public. No licenses shall be issued by the board for the sale of liquor, beer or wine by rolling stores.

All beer, except draft or keg beer, sold by retailers must be sold or dispensed in bottles, cans or other containers not to exceed one pint, or 25.4 ounces. All wine sold for off-premises consumption must be sold or dispensed in bottles or other containers in accordance with standards of fill specified in the prevailing standards of fill for wine prescribed by the U.S. Treasury Department.

Importers can sell alcoholic beverages only to wholesale licensees, unless they are granted permission by the State of Alabama. Licenses may not be assigned, and transfers of licenses can only be approved by the ABC Board. Licenses are terminated if a licensee becomes insolvent, makes an assignment for the benefit of creditors, or is adjudicated bankrupt.

K. Entertainment Districts

Section 28-3A-17.1, Code of Alabama 1975 allows Class 1-5 and certain Class 8 municipalities to create and establish an entertainment district designation for retail alcoholic beverage licenses. In addition, it also includes municipalities with an incorporated arts council, main street program, or downtown development entity. Section 28-3A-17.1(a), Code of Alabama 1975.

A Class 1, Class 2, Class 3, Class 4 municipality, or any municipality which is located 15 miles north of the Gulf of Mexico may establish up to five entertainment districts within its corporate limits, and each district must have at least four licensees holding a manufacturer's license that conducts tastings or samplings on the licensed premises, a restaurant retail liquor license, an on-premises alcoholic beverage license, or other retail liquor licenses in the area. Each district cannot exceed one-half mile by one-half mile although it may be irregularly shaped. Section 28-3A-17.1(c), Code of Alabama 1975.

A Class 5 municipality, any other eligible municipality, or a municipality with an incorporated arts council, main street program, or downtown development entity can establish no more than two entertainment districts within its corporate limits. Each district must have at least four licensees holding a retail liquor license in that area. Each district may not exceed one half mile by one-half mile in area but may be irregularly shaped. Section 28-3A-17.1(b), Code of Alabama 1975.

The governing body of a Class 8 municipality located in a county with a Class 3 municipality may establish two entertainment districts within its corporate limits which may not have fewer than four licensees holding a retail liquor license in that area. Each district may not exceed one-half mile by one-half mile in area, but may be irregularly shaped. Section 28-3A-17.1(d), Code of Alabama 1975.

The governing body of a Class 8 municipality that is located in county with a Class 2 municipality and is primarily located on an island may establish three entertainment districts within its corporate limits. One district must have not fewer than two licensees holding a retail liquor license in a business or commercial area; one district may be established in a business or commercial area at times when special events are held as designated by the town council; and one district may be established on property owned by the Dauphin Island Property Owners Association and known as the Isle Dauphine Complex. Each district may not exceed one-half mile in area, but it may be irregularly shaped. Section 28-3A-17.1(g), Code of Alabama 1975.

The governing body of a Class 8 municipality that is not located in a county with a Class 2 municipality, abuts or spans the Intracoastal Waterway and abuts the Gulf of Mexico, has an incorporated arts council, main street program, or downtown

development entity may establish three entertainment districts within its corporate limits, provided that each district has no fewer than four licensees holding a retail liquor license in that area, and each district does not exceed one-half mile by one-half mile in area, but may be irregularly shaped. Section 28-3A-17.1(h)(1), Code of Alabama 1975.

While not required, the League encourages any municipality establishing an entertainment district as provided in Section 28-3A-17.1 of the Code to notify the ABC Board and provide the board with a copy of any ordinance passed establishing or relating to the district established. For enforcement purposes municipalities must work closely with the ABC Board and its enforcement personnel.

A licensee who receives an entertainment district designation for an on-premises retail license must comply with all laws, rules and regulations governing its license type except that patrons, guests, or members of the licensee may exit the licensed premises with open containers of alcoholic beverages and consume alcohol anywhere within the confines of the established entertainment district. However, the patron, guest or member of the licensee may not enter another licensed premise with open or closed containers acquired elsewhere.

L. Food Truck License (Section 28-3A-17.2)

Food truck operators who are properly licensed by the state ABC Board as provided in Section 28-3A-17.2, Code of Alabama 1975, are authorized to sell alcoholic beverages for on-premises consumption to guests who may consume the beverages in open containers anywhere within an area designated by a municipal governing body within an established entertainment district, provided the license is no prohibited by a valid ordinance or other ordinance in the valid exercise of police power by the municipality in which the food truck is located.

An applicant for a food truck license must obtain from the municipality in which the food truck seeks to operate, a certificate setting out that the applicant has presented their application to the governing body of the municipality and the municipality approves the issuance of the license to sell alcoholic beverages.

A food truck licensee operating outside of a designated entertainment district may not sell alcoholic beverages. Further, they must comply with all on-premises rules, other than the requirement for seating and restrooms.

A food truck licensee may not serve or be authorized to serve any food or beverage within 150 feet of any entrance to any permanent restaurant or to any ABC licensee.

M. Government Venue License (Act 2025-405)

This license authorizes a licensee to purchase liquor and wine from the ABC Board and table wine and beer from any wholesale licensee and to sell at retail and dispense for on-premises consumption alcoholic beverages at a location on property owned or leased by the state or a political subdivision of the state. This is a special retail license for selling and dispensing alcoholic beverages only on an "occasional use basis." Section 28-3A-19.2(b), Code of Alabama 1975. Any holder of a special retail license under Section 28-3A-19, Code of Alabama 1975, may convert their license to a government venue license no later than September 30, 2026. Section 28-3A-19.2(c), Code of Alabama 1975

Locations may include, but are not limited to, civic centers and community event spaces; concert centers, amphitheaters, and music halls; convention centers and exhibition halls; government owned stadiums and sports complexes; or historic properties, parks, fairgrounds, or other outdoors spaces. Section 28-3A-19.2(a), Code of Alabama 1975.

N. Event Storage License (Act 2025-405)

This license authorizes the licensee to purchase and store alcoholic beverages at one designated location and transfer alcoholic beverages as needed to special event venues where the licensee holds the appropriate special event license number under the same Federal Employer Identification Number. Only a holder of (1) a special events retail license, (2) a nonprofit special events retail license, (3) a special retail license for 30 days or less, or (4) a government venue license may be eligible to make application for and hold an event storage license. Section 28-3A-20.5(b), Code of Alabama 1975.

O. Educational Tourism Distillery License (Section 28-3A-6.5)

Any person, association, or corporation engaged in producing, bottling, manufacturing, distilling, rectifying, or compounding at least 100,000 gallons of liquor a year may acquire an Educational Tourism Distillery license. A licensee is authorized, among other things, to purchase and sell alcoholic beverages for on-premises consumption, sell at retail liquor manufactured by the distillery, and provide samples at the end of any educational tours of the distillery. Such guided tours are required and must provide information to patrons regarding the historic and scientific characteristics of the liquor manufactured at the licensed premises.

Other State Regulations

Other state regulations are found in Section 28-3A-25, Code of Alabama 1975. Included among the regulations are provisions which prohibit licensees from selling to minors; prohibit minors from purchasing alcoholic beverages; prohibit customers from consuming on state ABC Store premises; prohibit sales in dry counties; and prohibit sales by cafes, lunchrooms, restaurants, hotel dining rooms or other public places after 2:00 a.m. on Sundays, except where authorized by local law, ordinance in a wet municipality, or by municipal referendum election resulting in favor of Sunday sales in a wet municipality. A local act, which has been properly advertised, may authorize Sunday sales of alcohol within a single city as required by Section 28-3A-25(20), Code of Alabama 1975. The advertising requirement found in Section 106 of the Constitution of Alabama does not apply to laws passed for a class of municipalities because such laws are general laws and do not fall within the language of that section. AGO 2001-0206. Section 28-3A-25, Code of Alabama 1975, authorizes the governing body of any wet municipality, by ordinance, to permit and regulate the sale of alcoholic beverages on Sunday after 2:00 a.m. for on-premises or off-premises consumption, or both. This section also gives the governing body of any wet municipality the option of holding a referendum election to determine whether Sunday sales of alcohol shall be permitted.

In addition to the above listed regulations on the possession of alcoholic beverages, the Motor Vehicles and Traffic portion of the Code prohibits the possession of an open container of alcoholic beverages in motor vehicles. Prior to 2000, there was not statewide open container law in Alabama. Section 32-5A-330, Code of Alabama 1975 provides that it is unlawful for a person to have in his or her possession alcoholic beverages in an open container in the passenger area of a motor vehicle of any kind on a public highway or right of way of a public highway of the state.

Municipal Regulation Through the Licensing Power

Section 11-51-90, Code of Alabama 1975, gives municipalities the authority to levy and collect license fees for the privilege of doing business within the corporate limits of a municipality. This section gives municipalities the authority to license retailers, importers, manufacturers and wholesalers of liquor, table wine and beer, although the amount of the license fee may, in some cases, be regulated by state statute. For instance, Section 28-7-13 and Section 28-3-194, Code of Alabama 1975, limit municipal licenses on table wine and beer to one-half the state license levy. Section 28-3A-6 provides that taxes on beer must be levied at the time the beer is allocated for the purpose of retail sale and not at the time the beer is dispensed for consumption. Section 28-3A-6, Code of Alabama 1975. These licenses may be levied for the purpose of raising revenue and for purposes of regulation. Section 11-51-91, Code of Alabama 1975 limits licenses on businesses in the police jurisdiction of the municipality to not more than one-half the amount charged in the corporate limits. All money collected from police jurisdiction licensees must be expended to provide services in the police jurisdiction. Sections 28-7A-1 to 28-7A-6, Code of Alabama 1975, authorize municipalities to elect to have their licenses on beer and table wine collected by the state ABC Board.

Municipalities do not have unlimited discretion to deny approval of alcoholic beverage licenses even when local consent is required before the ABC Board will grant a liquor license. Certainly, the constitutional protections of the Commerce Clause, the Due Process Clause and the Equal Protection Clause are always applicable. To apply any ordinance dissimilarly to those similarly situated would be wrong.

A municipality may not deny its consent or approval simply because the governing body does not want a business of this type located in the municipality. While a municipality may prescribe certain conditions and regulations governing the issuance of liquor licenses, such regulations must bear a reasonable relationship to the municipality's interest in protecting the health, safety and public welfare of the community. A city or town may not, under the guise of its licensing power, prescribe such conditions or high fees as to constitute a prohibition on the sale of alcoholic beverages when the right has been granted by the state. *Inn of Oxford, Inc. v. Oxford*, 366 So.2d 690 (Ala. 1978); *Swann v. Graysville,* 367 So.2d 952 (Ala. 1979); *Davis v. Wilmer,* 376 So. 2d 698 (Ala. 1979); and *Harrelson v. Glisson,* 424 So. 2d 591 (Ala. 1982). Valid reasons for denial of alcoholic beverage license applications or consent include:

- Traffic problems or congestion which would result if the license were granted;
- The proposed location is not zoned for such a business;
- The proposed location would violate distance requirements from churches or schools as established by city ordinances; and
- Any other reason which is grounded in the municipality's protection of the health, safety and public welfare of the community.

Is a substantial protest by property owners whose property surrounds the proposed location which is the subject of a liquor license hearing, when the protest is based simply on the fact that the surrounding property owners do not want a liquor-selling establishment in their area, in and of itself a valid reason for a municipality to prevent an individual from selling liquor at that location? The courts are of mixed opinions on this question.

Unless a municipality has adopted a specific procedure to approve the issuance of alcoholic beverage licenses or consent, a majority vote of a quorum of the governing body is sufficient for approval. AGO 1981-0436 (to Hon. Clarence Rhea, June 26, 1981).

License Suspension or Revocation

Section 28-3A-24, Code of Alabama 1975, provides that the state ABC Board shall have full and final authority to suspend or revoke any license issued under the ABC Licensing Code. While a municipality may revoke its privilege license for the sale of alcoholic beverages, the revocation would not prevent the continuation of business under a valid license since the ABC Board has exclusive authority to revoke licenses. *Ott v. Moody*, 283 Ala. 288, 216 So.2d 177 (Ala. 1968); AGO 1983-0209 (to Hon. John H. Hood, March 2, 1983). All municipalities which have reasons for obtaining the revocation of an ABC license should contact the ABC Board on the matter.

Regulation Through Municipal Zoning Ordinances

A municipality, by properly drawn ordinance, may limit the locations from which alcoholic beverages may be sold. *Capps v. Bozeman*, 272 Ala. 249, 130 So.2d 376 (Ala. 1961); *Norwood v. Capps*, 278 Ala. 218, 177 So.2d 324 (Ala. 1965); *USA Oil Corp. v. Lipscomb*, 293 Ala. 103, 300 So.2d 362 (Ala. 1974). However, a municipality may not, through zoning ordinances, completely prohibit the sale of alcoholic beverages in the municipality. *Campbell v. Hueytown*, 289 Ala. 388, 268 So.2d 3 (Ala. 1972).

Some municipalities have adopted ordinances prohibiting alcoholic beverage establishments within a certain minimum distance from churches or schools (e.g., 500 feet). Ordinances of this type have been upheld by the courts provided no such establishments are located within the prescribed distances. *Davis v. Wilmer*, 376 So.2d 698 (Ala. 1979). Existing establishments within such distances cannot be grandfathered in. *Harrison v. Buckhalt*, 364 So.2d 283 (Ala. 1978).

Municipalities can prohibit certain types of conduct in drinking establishments. *Lanier v. Newton*, 518 So.2d 40 (Ala. 1987).

Municipalities have no authority to prohibit the sale of chilled wine and beer or the sale of single iced-down beer and wine. AGO 1991-0220.

Other Municipal Regulatory Options

Section 28-3A-25, Code of Alabama 1975, provides for the hours of operation for establishments serving or selling alcoholic beverages. However, in *Gadsden Motel Co. v. Attalla*, 378 So.2d 705 (1979), the Alabama Supreme Court held that a municipality has authority, by ordinance, to regulate the hours of sale of alcoholic beverages as long as there is no conflict with state law and the hours set by the ordinance are reasonable Jefferson County has authorized the sale of alcoholic beverages on Sunday in Act 90-177 and Mobile County has done the same in Act 91-604.

Some cities across the country have considered limiting the number of license applications that will be allowed within the city. Such restrictions could subject a city to a possible antitrust suit.

Any license increases should be reasonable and have a rational basis for the increase such as increased expenses for policing the area.

Selected Attorney General's Opinions and Court Decisions

NOTE: These summaries are not intended as a substitute for reading the opinion or decision itself.

- A municipal council must give three weeks' notice prior to the holding of a wet/dry referendum. AGO 1997-0022.
- In *Ex parte Alabama Alcoholic Beverage Control Board*, 683 So.2d 952 (1996), the Alabama Supreme Court upheld the right of the state to operate liquor stores.
- The Fourth Circuit Court of Appeals upheld an ordinance which bans all stationary outdoor advertising of alcoholic beverages in areas frequented by children. *Anheuser-Busch, Inc. v. Schmoke*, 101 F.3d 325 (4th Cir. 1996).
- In *The Ranch House, Inc. v. Anniston*, 678 So.2d 745 (1996), the Alabama Supreme Court upheld a municipal ordinance which prohibited nude or partially nude dancing in any establishment which sold or allowed the consumption of alcoholic beverages on the premises.
- In *Prattville v. Welch*, 681 So.2d 1050 (1995), the Alabama Supreme Court held that it was not an unreasonable violation of equal protection to tax private liquor stores while exempting state liquor stores from the tax.
- In *Mobile v. M.A.D.*, Inc., 684 So.2d 1283 (1996), the Alabama Supreme Court held that Alabama's tax on liquor is not a consumer tax and cannot be excluded when computing the license tax owed the City of Mobile. See also, *Montgomery v. Popular Package Stores, Inc.*, 684 So.2d 1288 (Ala. 1996).

- In *Opinion of the Justices*, 694 So.2d 1307 (1997), the Alabama Supreme Court held that because the purpose of a local act imposing a tax on beer was to raise revenue, rather than regulate liquor traffic, as is allowed by Section 104, Alabama Constitution, 1901, it is invalid because it conflicts with a general law on the same subject.
- A grandfather clause in an ordinance that allows the continued licensing of previously licensed premises, thus exempting those premises from the application of an ordinance that prohibits the sale of alcoholic beverages within a certain distance from a church or school, probably violates the equal protection guarantees of the Alabama Constitution. AGO 1997-0279.
- In *Montgomery v. Glenn,* 749 So.2d 478 (1999), the Alabama Court of Civil Appeals held that the city's denial of an applicant's first application for a Class 1 liquor license did not have a res judicata effect on the second application. The court further held that the city carried the burden of proving the denial of the application was supported by evidence.
- The Alabama Court of Civil Appeals held that a municipality's denial of a liquor license on the grounds that the location was becoming "more residential" was arbitrary and capricious since no evidence indicated that the issuance of a liquor license would have a detrimental effect on adjacent residential neighborhoods, and the prior owner of the business had obtained a liquor license to operate in the same location. *Woods v. Trussville City Council,* 795 So.2d 721 (Ala. Civ. App. 2000).
- Persons who are 19 or 20 years of age may serve and dispense alcoholic beverages to patrons in a restaurant. AGO 2000-0201.
- If a café owner in a dry county, having control over his premises, knowingly allows it to be used by those bringing alcoholic beverages, he may be accused of unlawful possession himself through constructive possession. He or she may also be guilty as an accessory who aids or abets the commission of the unlawful act under Section 13A-2-23, Code of Alabama 1975. If the restaurant is used frequently or customarily, and to the knowledge of the owner, as a place for private functions where alcohol is consumed, the owner may be subject to liability under the theory of liquor nuisance as found in Section 28-4-1, Code of Alabama 1975. AGO 2002-0159.
- Local bill specifying circumstances under which a municipality fitting within the population limits prescribed in the bill can authorize the sale of alcoholic beverages serves the same purpose evidenced by Section 28-2A-1 et seq, of the Code of Alabama 1975, and therefore, if enacted, would be an unconstitutional violation of Section 105 of the Constitution of Alabama of 1901 because it is subsumed by the general law. *Opinion of the Justices No. 376*, 825 So.2d 109 (Ala. 2002).
- Speculation that a liquor license applicant might operate their lounge in the same manner as the prior licensee was insufficient to establish circumstances "clearly detrimental" to the adjacent residential neighborhoods or show the creation of a nuisance so as to deny the approval of a liquor license and dance permit. *King v. Birmingham,* 885 So.2d 802 (Ala. Civ. App. 2004).
- Section 17-15-1 of the Code of Alabama 1975, which confers standing on qualified electors to challenge certain elections, does not confer standing on a qualified elector to challenge a local option election on the sale of alcoholic beverages. *Cedar Bluff v. Citizens Caring for Children,* 904 So.2d 1253 (Ala. 2004).
- To prove that a municipality's decision to deny a liquor license was arbitrary and capricious, the burden is on the claimant to show that there was no reasonable justification supporting the municipality's decision. *Phase II, LLC v. Huntsville,* 952 So.2d 1116 (Ala. 2006).
- The decision of a municipality in denying an application for a liquor license is subject to judicial review and is reversible only if it is shown that the municipality acted arbitrarily in denying the application for a liquor license. *Phillips v. Citronelle,* 961 So.2d 827 (Ala. Civ. App. 2007).
- A municipal governing body may not call for a special election and have that special election considered the election next succeeding the filing of the wet/dry petition. A municipal wet/dry referendum must be held at the same time as one of the elections enumerated in Section 28-2A-1 of the Code of Alabama. Section 28-2A-1(f) of the Code of Alabama does not authorize a municipal governing body to set a special election for a wet/dry referendum. It only allows the municipal governing body to determine which election date next succeeding the filing of the wet/dry petition will be used for holding the wet/dry referendum. AGO 2009-0089.
- A municipal option election held pursuant to sections 28-2A-1 through 28-2A-3 of the Code of Alabama must be conducted by the municipality in the same manner that the municipality conducts other municipal elections regardless of the date of the election. AGO 2010-0003.

- The process for the sale of draft beer in wet cities and counties begins with a legislative act authorizing the same. Provided, however, that the Alcoholic Beverage Control Board may issue a special permit for the sale of draft beer without such an act, either if, in its judgment, the municipality is a rural community that currently has a predominantly foreign population and the consumption of draft beer is in accordance with their habits and customs, or if a civic center authority wishes to sell draft beer for consumption in the civic center. The wording of Section 28-3A-23(h) requires that, for either of these exceptions to apply, the circumstances that allow the exception must exist at the time the permit is granted. AGO 2011-0029.
- A city's decision to deny an application for a special retail liquor license for a bed-and-breakfast facility was not arbitrary or capricious. Although the applicants' property was not in close proximity to a school or child care facility, it was directly across the street from a public park and next door to public basketball court, both places that children were likely to be found, and the city could have reasonably determined that granting of a liquor license to the applicants could create a nuisance or otherwise adversely affect public health, safety, and welfare of the adjacent residential neighborhoods. *Biggs v. City of Birmingham*, 91 So.3d 708 (Ala.Civ.App.2012).
- The decision of the municipality in denying an application for a liquor license is subject to judicial review and is reversible if it is shown that the municipality acted arbitrarily in denying the application for a liquor license. *Ensley Seafood Five Points, LLC v. City of Birmingham*, 98 So.3d 1149 (Ala. Civ. App. 2012).
- Assuming all other aspects of section 28-3A-17.1 of the Code of Alabama are met, a city is authorized to establish an entertainment district because the city operates a recognized main street program as required for Class 7 municipalities pursuant to section 28-3A-17.1. AGO 2014-0046.
- Substantial evidence supported the city council's revocation of a nightclub's business licenses and rescission of its liquor license and dance permit. *Atlantis Entertainment Group, LLC v. City of Birmingham,* 231 So.3d 332 (Ala. Civ. App. 2017).
- Gas station's allegation that the town denied an application for a liquor license based on the owners' race and national origins stated an equal protection claim. *Minesaha, Inc. v. Town of Webb*, 236 So.3d 890 (Ala. Civ. App. 2017).
- Circuit court lacks jurisdiction via certiorari over denial of liquor license by a local government in a different county. *EMBU, Inc. v. Tallapoosa County Com'n*, 263 So. 3d 731 (Ala. Civ. App. 2018).
- Clay County's distribution of funds that it receives from the State pursuant to section 40-28-2(c)(1) of the Code of Alabama to applicable municipalities shall be made pro rata on the basis of Alabama Alcoholic Beverage Control Board payments received by each such jurisdiction in the fiscal year 1979 to the total Alabama Alcoholic Beverage Control Board payments to the county and all municipalities in such county in the fiscal year 1979. Clay County's distribution of funds that it receives from the State pursuant to section 40-28-2(c)(1) of the Code of Alabama to applicable municipalities shall be made pro rata on the basis of Alabama Alcoholic Beverage Control Board payments received by each such jurisdiction in the fiscal year 1979 to the total Alabama Alcoholic Beverage Control Board payments to the county and all municipalities in such county in the fiscal year 1979. AGO 2022-0045.