IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
Assigned on Briefs June 27, 2014

BARRY WOOD v. DECATUR COUNTY TENNESSEE

Appeal from the Chancery Court for Decatur County
No. 12CV221 Charles C. McGinley, Judge

No. W2013-02470-COA-R3-CV - Filed August 25, 2014

Applicant filed a petition for writ of certiorari against Decatur County challenging the denial of his beer permit application. The trial court reversed the decision of the local beer board on the basis that the sale of beer was allowed due to Decatur County's status as a Tennessee River resort district. Because we conclude that Decatur County's ordinance restricting the sale of beer within two thousand feet of a church remains in effect despite Decatur County's status as a Tennessee River resort district, we reverse the decision of the trial court. Reversed and remanded.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed and Remanded

J. STEVEN STAFFORD, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, P.J., W.S., and DAVID R. FARMER, J., joined.

J. Michael Ivey, Parsons, Tennessee, for the appellant, Decatur County, Tennessee.

Howard F. Douglass, Lexington, Tennessee, for the appellee, Barry Wood.

OPINION

Background

The facts in this case are not in dispute and were stipulated to at the trial court level. Petitioner/Appellee, Barry Wood ("Mr. Wood") filed an application with the Decatur County Beer Board of Defendant/Appellant Decatur County, Tennessee ("Decatur County"),

requesting a license for the sale and storage of packaged beer in a location within Decatur County, but outside any incorporated city or town. Pursuant to Tennessee Code Annotated Section 57-5-105, discussed in detail, *infra*, Decatur County has exercised its discretion to enact an ordinance forbidding the "storage, sale or manufacture at places within two thousand feet of such places of public gatherings including schools and churches."[1] *See* Tenn. Code Ann. §57-5-105. Later, Decatur County also adopted Tennessee River Resort District Act status, which purportedly allows the sale of alcoholic beverages within three miles inland from the nearest bank of the Tennessee River.[2] Mr. Wood filed his application for a beer permit with Decatur County on or about January 4, 2012, after previously obtaining a license to sell alcoholic beverages from the State of Tennessee's Alcoholic Beverage Commission. On March 26, 2012, the Decatur County Beer Board denied his application by a unanimous vote. The Decatur County Beer Board determined Mr. Wood's place of business was located approximately 625 feet from White's Creek Chapel,[3] violating the two thousand foot distance ordinance.

On April 23, 2012 Mr. Wood filed a petition for writ of *certiorari*, arguing the Decatur County Beer Board erred in its decision to deny his application for a beer permit. In his petition, Mr. Wood contends that his business is located within a Tennessee River resort district, and that state statute authorizes the sale of both alcoholic beverages and beer within the district. Decatur County filed a response on May 22, 2012, denying that any relief should be granted to Mr. Wood.

A hearing was conducted on September 17, 2013 in the Chancery Court of Decatur County. The Chancery Court found the provisions of the Tennessee River Resort Act adopted by Decatur County supercede the local distance ordinance and ordered Decatur County to issue a beer permit to Mr. Wood. The trial court's written order was entered on October 31, 2013. Decatur County timely filed an appeal on November 5, 2013.

The same day, Decatur County filed a motion for stay pending appeal pursuant to

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[1] The record does not contain the exact language of the distance ordinance enacted in Decatur County. However, it is undisputed that Mr. Wood's proposed location falls within the area where the sale of beer is restricted by the ordinance.

[2] The record does not contain the exact dates of the adoption of the distance ordinance and the Tennessee River Resort District Act. However, it is undisputed that the local ordinance was enacted prior to the adoption of the Tennessee River Resort District Act.

[3] There is no dispute that White's Creek Chapel is a church within the definition of Tennessee Code Annotated Section 57-5-105(b)(1), discussed in detail *infra*. Further, there is no dispute that White's Creek was in operation prior to Mr. Wood's application for a beer permit.

Rule 62.04 of the Tennessee Rules of Civil Procedure. *See* Tenn. R. Civ. P. Rule 62.04 (providing that "when an appeal is taken the appellant by giving a bond may obtain a stay"). Decatur County requested a stay of the order requiring the issuance a beer permit during the time the appeal was pending, arguing it would invalidate Decatur County's two-thousand foot rule. Further, Decatur County's motion contained a request for waiver of the cost bond pursuant to Tennessee Rule of Civil Procedure Rule 60.02, which provides that when the appeal is taken by the County, no cost bond or other security should be required from the appellant. The chancery court heard Decatur County's requests on November 14, 2013. On November 20, 2013, the trial court entered an order denying Decatur County's requests.

Issues Presented

As we perceive it, there is one issue before this Court: Whether Decatur County's status as a Tennessee River resort district supersedes the distance ordinance previously adopted by Decatur County?

Standard of Review

We review the trial court's findings of fact *de novo* with a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). No presumption of correctness, however, attaches to the trial court's conclusions of law and our review is *de novo*. ***Blair v. Brownson***, 197 S.W.3d 681, 684 (Tenn. 2006) (citing ***Bowden v. Ward***, 27 S.W.3d 913, 916 (Tenn. 2000)).

The specific issues in this case concern the construction and interpretation of various statutes. Questions regarding the interpretation and application of statutes to undisputed facts are issues of law; as such, they are reviewed *de novo*, with no presumption of the correctness in the trial court's conclusions. ***U.S. Bank N.A. v. Tenn. Farmers Mut. Ins. Co.***, 277 S.W.3d 381, 386 (Tenn. 2009). In determining the proper interpretation to be given to a statute, we are to apply the "familiar rules" of statutory construction:

> Our role is to determine legislative intent and to effectuate legislative purpose. [***Lee Med., Inc. v. Beecher***, 312 S.W.3d 515, 526 (Tenn. 2010)]; ***In re Estate of Tanner***, 295 S.W.3d 610, 613 (Tenn. 2009). The text of the statute is of primary importance, and the words must be given their natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose. *See* ***Lee Med., Inc.***, 312 S.W.3d at 526; ***Hayes v. Gibson Cnty.***, 288 S.W.3d 334, 337 (Tenn. 2009); ***Waldschmidt v. Reassure Am. Life Ins. Co.***, 271

> S.W.3d 173, 176 (Tenn. 2008). When the language of the statute is clear and unambiguous, courts look no farther to ascertain its meaning. *See* ***Lee Med., Inc.***, 312 S.W.3d at 527; ***Green v. Green***, 293 S.W.3d 493, 507 (Tenn. 2009). When necessary to resolve a statutory ambiguity or conflict, courts may consider matters beyond the statutory text, including public policy, historical facts relevant to the enactment of the statute, the background and purpose of the statute, and the entire statutory scheme. ***Lee Med., Inc.***, 312 S.W.3d at 527–28. However, these non-codified external sources "cannot provide a basis for departing from clear codified statutory provisions." ***Id.*** at 528.

Mills v. Fulmarque, 360 S.W.3d 362, 368 (Tenn. 2012). Further, when construing multiple statutes, statutes involving the same subject matter must be construed harmoniously, so that they do not conflict. ***State v. Turner***, 193 S.W.3d 522 (Tenn. 2006); ***In re Akins***, 87 S.W.3d 488, 493 (Tenn. 2002) (citing ***Parkridge Hosp., Inc. v. Woods***, 561 S.W.2d 754, 755 (Tenn. 1978)).

Analysis

This appeal addresses the intersection of Decatur County's minimum distance ordinance with Decatur County's status as a Tennessee River resort district. A brief discussion of the various laws applicable to this situation is, therefore, necessary to a full understanding of the dispute in this case. First, we note that Tennessee law typically provides separate regulations with regard to the sale of beer and the sale of alcoholic beverages. Thus, the terms "alcoholic beverages" and beer are not synonymous. An alcoholic beverage includes "alcohol, spirits, liquor, wine, and every liquid containing alcohol, spirits, wine capable of being consumed by a human being other than patented medicines or beer". *See* Tenn. Code Ann. 57-4-102(1). In contrast, beer is defined as:

> [B]eer, ale or other malt beverages, or any other beverages having an alcoholic content of not more than five percent (5%) by weight, except wine as defined in § 57-3-101; provided, however, that no more than forty-nine percent (49%) of the overall alcoholic content of such beverage may be derived from the addition of flavors and other nonbeverage ingredients containing alcohol.

See Tenn. Code Ann. §57-5-101(b).

As there are separate definitions for alcoholic beverages and beer, there are also two separate regulating bodies. The sale of alcoholic beverages is generally regulated by the State. According to this Court: "To implement and exercise control over alcoholic beverages[,] the General Assembly created the Alcoholic Beverage Commission." ***Underground II. Inc. v. City of Knoxville***, No. 03A01-9709-CH-00425, 1998 WL 46447, at *2 (Tenn. Ct. App. Feb. 4, 1998). According to Tennessee Code Annotated Section 57-4-201:

> The [Alcoholic Beverage] [C]ommission shall make regulations, not inconsistent with this chapter, for clarifying, interpreting, carrying out and enforcing the terms of this chapter, for ensuring the proper and orderly conduct of business by licensees, and for regulating all advertising of alcoholic beverages by licensees.

Tenn. Code Ann. § 57-4-201(2). Thus, "[i]t is apparent that the General Assembly has elected to retain substantial . . . control over and regulation of alcoholic beverages."[4] ***Underground***, 1998 WL 46447, at *2.

In contrast, the sale of beer is typically regulated by local governments. As is relevant to this case, Tennessee Code Annotated Section 57-5-105(a) provides, in pertinent part: "The owner of a business desiring to sell, distribute, manufacture, or store beer in any Class A county outside the limits of any incorporated city or town shall file an application for a permit with the county legislative body or a committee appointed by the county legislative body." In addition to the general power to grant or deny permits to sell beer, the statute sets out the power of the county government to impose restrictions on the issuance of permits. *See generally* Tenn. Code Ann. §57-5-105(b). Specifically at issue in this case is subsection (b)(1) of Tennessee Code Annotated Section 57-5-105, which allows county legislative bodies to adopt ordinances establishing distance rules prohibiting the issuance of a permit for an establishment to sell beer within two thousand feet of a school, church or other place of public gathering:

> No beer will be sold except at places where such sale will not cause congestion of traffic or interference with schools, churches, or other places of public gathering, or otherwise

[4]Tennessee Code Annotated Section 57-3-106, however, allows counties and municipalities the power to permit or forbid the manufacture, sale, receipt, storage, transportation, distribution, and possession of alcoholic beverages within its territorial limits, through local option election. Thus, state control of the sale of alcoholic beverages is not exclusive. This provision is not at issue in this appeal.

> interfere with public health, safety and morals, the county legislative body having the right to forbid such storage, sale or manufacture at places within two thousand feet (2,000') of such places of public gatherings in its discretion.

Tenn. Code Ann. § 57-5-105(b)(1). The Tennessee Supreme Court has held that the local legislative body's "power and discretion in the regulation and control over the sale of beer" is "extremely broad." ***Fritts v. Wallace***, 723 S.W.2d 948, 949 (Tenn. 1987). Further, "[t]here is no doubt that this broad power and discretion extends to the enactment of ordinances that establish restrictions upon the issuance of permits to sell beer." ***Id.*** (citing ***Watkins v. Naifeh***, 635 S.W.2d 104 (Tenn. 1982)).Thus, the county legislative body has the discretion to impose a rule forbidding the sale of alcohol within two thousand feet of schools, churches, and other places of public gathering. As previously discussed, it is undisputed that Decatur County has exercised its discretion to adopt an ordinance implementing the two-thousand-foot rule pursuant to Tennessee Code Annotated Section 57-5-105. It is also undisputed that the premises for which Mr. Wood is attempting to obtain a beer permit is located within two thousand feet of a church within the meaning of Tennessee Code Annotated Section 57-5-105(b)(1).

Concurrent with the general requirements regarding the sale of alcoholic beverages and beer is the Tennessee River Resort District Act. Specifically, Tennessee Code Annotated Section 67-6-103(a)(3)(F)(i), provides:

> A county ranking in the first quartile of county economic distress in the United States for fiscal year 2006, as determined pursuant to subdivision (a)(3)(F)(v) and bordering on, or crossed by, the Tennessee River, may elect to be a "Tennessee River resort district" for purposes of this chapter.

In order to "elect" Tennessee River resort district status, a county must "adopt[] a resolution or ordinance approved by a two-thirds (2/3) vote of the legislative body of the jurisdiction." Tenn. Code Ann. § 67-6-103(a)(3)(F)(ii)(a). A Tennessee River resort district is defined as:

> [A] club, hotel, motel, restaurant or limited service restaurant located within a jurisdiction that has elected Tennessee River resort district status pursuant to § 67-6-103(a)(3)(F); provided, that for the purposes of this chapter, such district shall only extend inland for three (3) miles from the nearest bank of the Tennessee River.

See Tenn. Code Ann. § 57-4-102(35).

The purpose of the Tennessee River Resort District Act appears to be to allow the local government to share in the "tax actually collected and remitted by dealers within the boundaries of such district." Tenn. Code Ann. § 67-6-103(a)(3)(F)(i). A "dealer" is defined broadly by statute, generally referring to "every person" who deals in "tangible personal property for sale at retail, for use, consumption, distribution, or for storage to be used or consumed in this state." *See generally* Tenn. Code Ann. § 57-4-102(23).

Mr. Wood argues that a county's decision to become a Tennessee River resort district also affects the sale of alcoholic beverages and beer within the county. Specifically, Tennessee Code Annotated Section 57-4-101(a) provides that:

> It is lawful to sell wine and other alcoholic beverages as defined in § 57-4-102, and beer as defined in § 57-6-102, to be consumed on the premises of, or within the boundaries of, any:
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> * * *
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> (19) Tennessee River resort district as defined in § 57-4-102, subject to the further provisions of this chapter other than § 57-4-103; . . . .

It is undisputed in this case that some time after the adoption of the two-thousand-foot ordinance, Decatur County chose to adopt the provisions of the Tennessee River Resort District Act pursuant to Tennessee Code Annotated Section 67-6-103(a)(3). It is also undisputed that the premises Mr. Wood attempted to obtain a beer license for falls within the area subject to the Tennessee River Resort District Act. Finally, it is undisputed that Mr. Wood obtained a license to sell liquor under the Tennessee River Resort District Act prior to the date he applied for his beer permit.

Mr. Wood maintains the adoption of the Tennessee River Resort District Act created a new and separate area within the county wherein both liquor and beer may be sold if within three miles of the Tennessee River. Additionally, Mr. Wood argues the adoption of the Tennessee River Resort District Act makes it "lawful" to sell beer at his place of business, located within the new district, regardless of Decatur County's enactment of a local beer ordinance preventing the sale of beer within two thousand feet of a church. Thus, Mr. Wood argues that the trial court properly reversed the Decatur County Beer Board's denial of his beer permit.

In contrast, Decatur County argues the Tennessee River Resort District Act does not supercede local ordinances or exempt beer applicants from complying with those ordinances.

Indeed, nothing in Tennessee Code Annotated Section 57-4-101, nor anything contained in the Tennessee River Resort District Act, specifically addresses the applicability of local ordinances to applications for beer permits in Tennessee River resort districts. Although the Tennessee River Resort District Act has never been construed or interpreted by this Court, the Tennessee Supreme Court has interpreted Tennessee Code Annotated Section 57-4-101 in a similar circumstance. In ***State ex rel. Amvets Post 27 v. Beer Bd. of City of Jellico***, 717 S.W.2d 878 (Tenn. 1986), an owner of a club who had been issued an alcoholic beverage permit by the State sought review of the municipal beer board's refusal to grant him a permit to sell beer on the premises of the club. The local beer board refused to grant the permit due to a local ordinance limiting the number of beer permits within city limits. Like Mr. Wood in this case, the club owner cited Tennessee Code Annotated Section 57-4-101[5] as support for his application for a beer permit, arguing that because he was a "club" within the province of Tennessee Code Annotated Section 57-4-101, it was "lawful" for him to sell both alcoholic beverages and beer, and that the local beer board had no discretion to deny his application on the basis of the local ordinance.

The Tennessee Supreme Court disagreed. Specifically, the Court held that Tennessee Code Annotated Section 57-4-101's statement that the sale of beer was "lawful" at such an establishment did not remove the local beer board's discretion to apply its own local ordinances to deny a beer permit to the club owner. As explained by the Tennessee Supreme Court:

> It is clear from this provision that it is lawful to sell beer on the premises of a club such as appellant['s]. Absent any other statutory provisions or regulations, no local beer permit or license would be required by the holder of a club license from the Alcoholic Beverage Commission. . . .
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> * * *
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> Essentially it is the position of appellant that once a club or other permittee under Chapter 4 has been issued a license for on-premises consumption of alcoholic beverages and beer by

[5] Tennessee Code Annotated Section 57-4-101 has been amended numerous times since the decision in ***Amvets Post***, including in 2005 to include application of the statute to Tennessee River resort districts. *See* 2005 Pub.Acts, c. 212, § 4 (adding language including Tennessee River resort districts as covered establishments). The language of the statute that the sale of both alcoholic beverages and beer shall be "lawful" for an establishment governed by the statute, however, has not been altered. Accordingly, the decision in ***Amvets Post*** is good law on this subject.

the Tennessee Alcoholic Beverage Commission, then local beer boards must automatically and routinely issue a local beer permit to the state licensee.

[The club owner] does not insist that a local license is unnecessary. . . .

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It appears that the General Assembly, in enacting [Tennessee Code Annotated Section 57-4-202(b), regarding local control regulating beer permits],[6] clearly intended that

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[6] Tennessee Code Annotated Section 57-4-202(b) (1986) specifically involved the local beer board's ability to suspend both the alcohol and beer permits of an establishment found to be in violation of pertinent regulations, subject to later approval by the Alcoholic Beverage Commission. Although Tennessee Code Annotated Section 57-4-202(b) has since been amended, the current version of the statute makes clear that local beer boards maintain this authority:

> (1) As a pilot project to terminate July 1, 2014, unless extended by the general assembly, if, pursuant to § 57-5-108(n), a local or municipal beer board responsible for controlling the sale of beer or malt beverages within any county included within subsection (d), sends a certified letter, return receipt requested to the executive director of the alcoholic beverage commission providing notice that the beer board has suspended or revoked the permit of an establishment for a violation of chapter 5 of this title, upon receipt of the certified letter, the executive director of the alcoholic beverage commission shall:
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> (A) Schedule a show-cause hearing for the next regularly scheduled meeting of the commission to be held at least fourteen (14) days following the date the executive director receives the certified letter to provide an opportunity for the licensee to appear and show cause why the license to sell alcoholic beverages on the premises should not be suspended or revoked for violations of this chapter based on actions taken by the beer board pursuant to § 57-5-108(n); and
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> (B) Notify the individual or business entity, which is listed as the licensee at the same location where the beer permit had been suspended or revoked, of the date and time of the show-cause hearing.
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> (2) If the alcoholic beverage commission finds that a sufficient violation or violations of this chapter have occurred at such location, then the
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> (Continued....)

> county or municipal beer boards could suspend the sale of beer in premises covered by state licenses, and that such commissions could also suspend the sale of alcoholic beverages, subject to review by the Alcoholic Beverage Commission. Again the distinction between the regulation of alcoholic beverages and that of the sale of beer is manifest, and this statute seems to indicate that local beer boards have supervision and police authority over state licensees in the dispensation of beer.
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> * * *
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> Chapter 5 of Title 57, dealing generally with the issuance of beer licenses, makes no exception for the holders of liquor-by-the-drink licenses from the State. . . .
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> * * *
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> Primary control over the retail sale or consumption of beer has generally been vested in units of local government. See T.C.A. §§ 57-5-105 *et seq*. The Tennessee Alcoholic Beverage Commission has generally been given primary, although not exclusive, responsibility for regulating the distribution and sale

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(.....continued)
commission shall suspend or revoke the license of the establishment to the same extent and at least for the same period of time as the beer board has suspended or revoked the permit of the establishment pursuant to § 57-5-108(n).

Tenn. Code Ann. §57-4-202(b) (2013). The issues in this case occurred prior to the expiration of this statute. Further, nothing in the statute indicates that the expiration of the "pilot project" will alter the local beer board's power to grant, deny suspend, or revoke beer licenses. Indeed, another statute, Tennessee Code Annotated Section 57-5-108, specifically provides that:

> Permits or licenses [for the sale of beer] issued under this chapter by any county legislative body or any committee or board created by any county legislative body may be revoked or suspended in accordance with this section by the county legislative body, committee or board which issued the permit or license.

Tenn. Code Ann. § 57-5-108(a)(1)(A). Thus, the local beer board was likewise vested with the authority to suspend or revoke a beer permit, analogous to the situation presented in ***Amvets Post***.

> of alcoholic beverages other than beer. *See* T.C.A. §§ 57-1-101 through 57-4-308. *See also* ***Thompson v. City of Harriman***, 568 S.W.2d 92 (Tenn. 1978) (beer) and ***City of Chattanooga v. Tennessee Alcoholic Beverage Commission***, 525 S.W.2d 470 (Tenn. 1975) (other alcoholic beverages). In the latter case it was held that both state and local governments have some regulatory functions with respect to the sale of alcoholic beverages, and we are persuaded that the same is true with respect to the dispensation of beer by clubs and other permittees under Title 57, Ch. 4. . . .
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> Of course, it has been long held in this state that, consistently with T.C.A. § 57-5-108, municipalities have extensive authority to regulate the sale of beer within their boundaries. This includes the authority to limit the number and location of retail outlets, both for on-premises and off-premises consumption. *See* ***Watkins v. Naifeh***, 635 S.W.2d 104, 109 (Tenn. 1982). In the present case, as previously stated, [club owner] does not attack generally the validity of the local ordinance of the [local municipality] limiting the number of beer permits authorized to be outstanding at any one time, nor does it claim that any of the other provisions of the ordinance are unreasonable or improper. It simply insists that as a holder of a state license it is entitled to have a permit issue automatically and as a matter of course.
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> **Although the statutes on the point are complex, in our opinion they do not go as far as urged by appellant and free the holders of state licenses from the conditions and requirements of local governments respecting the sale of beer.**

Amvets Post, 717 S.W.2d at 879–81 (emphasis added). Thus, the Tennessee Supreme Court held that regardless of whether Tennessee Code Annotated Section 57-4-101 provides that the sale of beer at an establishment is "lawful," that statute does not exempt the establishment from the local ordinances applicable to the sale of beer in the relevant county or municipality.

As previously discussed, the holding in ***Amvets Post*** applied specifically to a local ordinance that limited the number of beer permits allowed in the jurisdiction. "It is clear

beyond any doubt that a city has the power 'to place an absolute limit upon the number of licenses or permits issued [for the sale of beer].'" ***Harper Enterprises, LLC v. City of Bean Station***, No. E2002-01734-COA-R3-CV, 2002 WL 31895516, at *2 (Tenn. Ct. App. Dec. 30, 2002.(quoting ***Watkins v. Naifeh***, 635 S.W.2d 104, 107 (Tenn.1982)). As previously discussed, however, it is also clear that a county has the power to restrict the sale of beer in relation to the beer sales' proximity to schools, churches, and other places of public gathering. *See* Tenn. Code Ann. §57-5-105(b)(1). While no Tennessee case has directly addressed this issue, the Tennessee Attorney General has published an Opinion that is relevant to the present dispute. *See* Tenn. Op. Atty. Gen. No. 99-098, 1999 WL 321788 (Tenn. A.G. 1999). Opinions of the Tennessee Attorney General are "persuasive" authority in this Court, ***Whaley v. Holly Hills Mem. Park, Inc.***, 490 S.W.2d 532, 533 (Tenn. Ct. App. 1972), and "entitled to considerable deference." ***State v. Black***, 897 S.W.2d 680, 683 (Tenn. 1995).

The Attorney General was presented with an issue highly analogous to the issue in this case: "[Whether] the holder of a license to sell liquor-by-the-drink [is] exempted from the provisions of a local beer ordinance that set a minimum distance between establishments that sell beer and schools, churches, parks, and similar locations?" Like Mr. Wood, the alcoholic beverage license-holder argued that the language of Tennessee Code Annotated Section 57-4-101(a) providing that the sale of both alcoholic beverages and beer was "lawful" for the included establishments conclusively established the license-holder's entitlement to a beer permit. The Attorney General concluded that the holder of the "liquor-by-the-drink" license was not exempt from the local distance ordinance, and, therefore, was not entitled to a beer permit when such permit would violate the local distance ordinance. As the Attorney General explained:

> The instant question is whether the mentioning of beer in this statute relieves holders of liquor licenses from the requirements of a local beer ordinance. While such an implication might be drawn from an isolated reading of § 57-4-101(a), the general framework of Tennessee's laws governing liquor and beer sales militates against such a construction of this statute, and court decisions have now made entirely clear that the relevant statutes must be read to maintain local control over issuance of beer permits, even for establishments licensed to sell liquor by the drink.
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> Although beer is mentioned in Tenn. Code Ann. § 57-4-101(a), "beer" is not included in the list of definitions contained in § 57-4-102. Beer is not mentioned in the licensure provisions of Tenn. Code Ann. § 57-4-201; only "wine" and

"alcoholic beverages" are referenced. . . .

* * *

A license or permit from the Alcoholic Beverage Commission must be obtained to sell alcoholic beverages or wine. That license or permit, however, does not cover beer sales. An appropriate beer permit must also be obtained to sell beer. The regulation of beer sales is discussed in part 5 of Title 57 of the Tennessee Code, and is subject to local requirements that may include minimum distances from places of public gathering. See Tenn. Code Ann. § 57-5-105. The Court of Appeals recently reiterated this principle that, historically, the State has regulated sales of alcoholic beverages other than beer, whereas local governments have regulated sales of beer. In ***Underground II, Inc. v. City of Knoxville***, 1998 WL 46447 (Tenn. App., Feb. 4, 1998), the Court observed,

> No authority has been expressly delegated to municipalities to regulate, license or otherwise control the operation of businesses relating to alcoholic beverages as opposed to beer. Without question, authority over beer and other beverages not falling within the definition of "alcoholic beverage" may be controlled and regulated by local governmental agencies.

In addition to these more general observations, the Tennessee Supreme Court has directly held that the holder of a liquor-by-the-drink license is not automatically entitled to sell beer, despite the language of § 57-4-101(a) [citing ***State ex rel. Amvets Post 27 v. Beer Board of the City of Jellico***, 717 S.W.2d 878 (Tenn. 1986) (discussed in detail, *supra*)] . . . .

The holder of a liquor-by-the-drink license must also possess a local beer permit in order to sell beer. The holder of a liquor-by-the-drink license is not exempted from minimum distance requirements of the local beer ordinances.

Tenn. Op. Atty. Gen. No. 99-098, at *1–*2. Thus, the Attorney General concluded that despite the broad language in Tennessee Code Annotated Section 57-4-101(a), an

establishment allowed to sell alcoholic beverages under that statute must still seek a permit to sell beer from the local beer board. In addition, in order to receive a beer permit, the application must comply with all local ordinances, including any duly-enacted distance ordinance.

We agree with the Tennessee Attorney General on this issue. As previously discussed, nothing in Tennessee Code Annotated Section 57-4-101 purports to remove the local legislative body's power to grant or deny beer applications, or otherwise regulate the sale of beer. Further, we conclude that the above analysis is applicable regardless of Decatur County's status as a Tennessee River resort district. While the sale of beer may be "lawful" in a Tennessee River resort district, the local beer board maintains the right to grant or deny permit applications and to enforce its local ordinances.[7] Indeed, to hold otherwise would be to create a clear conflict between Tennessee Code Annotated Section 57-4-101 and various statutes conferring power on local governments to control and regulate the sale of beer. *See* ***Underground II, Inc. v. City of Knoxville***, 1998 WL 46447, at *3. In interpreting statutes, we are to avoid a construction that places one statute in conflict with another, and "where a reasonable construction exists, we must resolve any possible conflict between statutes in favor of each other so as to provide a harmonious operation of the laws." ***Cronin v. Howe***, 906 S.W.2d 910, 912, 914 (Tenn. 1995). In order to construe Tennessee Code Annotated Section 57-4-101 without conflict with the statutes conferring local control over the sale of beer, we conclude that an establishment where the sale of alcoholic beverages and beer is "lawful" pursuant to Tennessee Code Annotated Section 57-4-101, such as in a Tennessee River Resort District, must still comply with all duly-enacted local ordinances governing the sale of beer. Here, pursuant to the power granted to the legislative body under Tennessee Code Annotated Section 57-5-105(b)(1), Decatur County enacted an ordinance preventing the sale of beer within two thousand feet of a church. Given the local government's "extremely broad" power and discretion to enact ordinances restricting the issuance of permits to sell beer, ***Fritts***, 723 S.W.2d at 949, we conclude that Decatur County's status as a Tennessee River resort district has no impact on Decatur County's previously enacted distance ordinance. Because Mr. Woods' premises are located within two thousand feet of a church, the Decatur County Beer Board did not err in denying Mr. Wood's application for a beer permit. The judgment of the trial court is, therefore, reversed.

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[7] Of course, a local beer board must enforce its ordinances in a non-discriminatory manner. "Discriminatory enforcement of Beer Board ordinances in the issuance of licenses is illegal and violates the equal protection rights of those who are denied such a permit." ***Randolph v. Coffee County Beer Bd.***, No. M2001-00077-COA-R3-CV, 2002 WL 360335, at *2 (Tenn. Ct. App. March 7, 2002) (*citing* ***Seay v. Knox County Quarterly Court***, 541 S.W.2d 946 (Tenn. 1976); *see generally* ***City of Murfreesboro v. Davis***, 569 S.W.2d 805, 808 (Tenn.1978); ***Cox Oil Co., Inc. v. City of Lexington Beer Bd.***, No. W2001-01489-COA-R3-CV, 2002 WL 31322533 (Tenn. Ct. App. Oct. 10, 2002). There is no allegation in this case that Decatur County's beer board applied the ordinance at issue in a discriminatory manner.

Conclusion

For the foregoing reasons, the judgment of the Decatur County Chancery Court is reversed. This cause is remanded to the trial court for further proceedings as are necessary and are consistent with this Opinion. Costs of this appeal are taxed to the Appellee, Barry Wood, for which execution may issue if necessary.

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J. STEVEN STAFFORD, JUDGE