



STATE OF ARKANSAS
OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

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OPINION NO. 85-63

February 25, 1985

Honorable John C. Ward
Arkansas House of Representatives
2705 Donaghey Drive
North Little Rock, AR 72116

Dear Representative Ward:

This letter is in response to your request for an Attorney General's opinion regarding the constitutionality of Act 527 of 1983, which permits persons 18 years of age and older to sell or handle beer and cooking wine sold at retail grocery stores doing a gross business of \$2 million or more.

Act 527 of 1983, codified as Ark. Stat. Ann. §48-903.2 (Supp. 1983), provides as follows:

- (a) Notwithstanding the prohibition of subsection (b) of this Section, persons eighteen (18) years of age and older may sell or otherwise handle beer and cooking wines at those retail grocery establishments which during the preceding calendar year had gross sales of two million dollars (\$2,000,000) or more.
- (b) Except as provided in subsection (a) it shall be unlawful for any wholesaler, retailer or transporter of alcoholic beverages to allow any employee or any other person under twenty-one (21) years of age to have anything whatsoever to do with the sale, transporting or handling of such alcoholic beverages.

It is my opinion that this Act could pass constitutional muster. State and federal courts, including the Arkansas Supreme Court, have consistently held that the 21st Amendment to the United State Constitution gives to each state extensive police power to regulate or prohibit the manufacture, sale, transport or possession of intoxicating liquor within its borders. Hardin v. Spears, 202 Ark. 804, 152 S.W.2d 1010 (1941). The sale of intoxicating liquor, beer and wine is

not a constitutionally protected right, but rather a privilege which the State may grant or withhold. If it grants the privilege, the General Assembly may impose thereon such restrictions and rules as it deems appropriate. Cook v. Glazer's Wholesale Drug Co., 209 Ark. 189, 189 S.W.2d 897 (1945); Gipson v. Morley, 217 Ark. 560, 233 S.W.2d 79 (1950).

The likely argument which one might make against the Act is that it violates the equal protection provisions of the United States and/or State Constitutions, in that it authorizes large stores to use 18 year olds to handle liquor while prohibiting smaller ones from doing so. However, given the broad police power which the General Assembly possesses in the alcoholic beverage arena, so long as there is a valid reason why the State needs to make the distinction between large grocery stores and small stores, to protect the public health, safety or welfare, this Act would probably be constitutional. There certainly may be several valid reasons why allowing persons between the age of 18 and 21 to handle liquor in small "mom and pop" stores could be hard to police and lead to abuses which would harm the public welfare.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Jeffrey A. Bell.

Sincerely,



STEVE CLARK
Attorney General

SC/JAB/ljm