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OPINION NO. 85-198

September 25, 1985

Mr. Charles R. Singleton, Director
Alcoholic Beverage Control Division
P.O. Box C-500
Little Rock, AR 72203

Dear Mr. Singleton:

This is in response to your letter requesting an Attorney General's opinion regarding the following questions:

- (1) Whether Hot Springs City Ordinance No. 3708, adopted August 1, 1983, violates applicable State laws; and
- (2) Whether a city or county may adopt a local ordinance that extends the hours for sale of alcoholic beverages beyond those established by Ark. Stat. Ann. §48-901(b)?

In answer to your first question, it is my opinion that Ordinance 3708 is basically in compliance with State law, but does violate the law in some respects. Section 3 of the Ordinance states that it applies only to those establishments falling under the Coverage of Act 132 of 1969 and later amendatory Acts:

All hotels, motels, restaurants, and other establishments licensed to sell alcoholic beverages to the public for on-premises consumption pursuant to Act 132 of 1969, Act 387 of 1973, and any subsequent acts amendatory thereof, may admit patrons and sell alcoholic beverages only during the hours between 7:00 a.m. each day and 3:00 a.m. the following day; provided, that such establishments may permit patrons previously admitted to remain on the premises until 3:30 a.m. each day. (emphasis added).

Section 12 of Act 132 of 1969, as amended by Section 1 of Act 387 of 1973 and later amendments, governs the respective

powers of State and local governments to set closing hours for establishments receiving permits under Act 132 of 1969. This provision, codified as Ark. Stat. Ann. §48-1412 (Repl. 1977), states in pertinent part as follows:

The Board is authorized to adopt and enforce reasonable rules and regulations governing the qualifications for permits hereunder, the operation of licensed premises, and otherwise implementing and effectuating the provisions and purposes of this Act [§§48-1401 -- 48-1418], and, in so doing, shall be guided, insofar as pertinent, by rules and regulations now or hereafter applicable to retail liquor outlets. Nothing in this Act, however, shall be construed as limiting the power of other proper state or local governmental bodies to regulate the operation of establishments under this Act as may be necessary for the protection of public health, welfare, safety, and morals. The regulations of the Alcoholic Beverage Control Board and existing laws with respect to the closing hours of licensed premises under this Act shall be applicable to all such licensed premises in the State, except that the governing body of a city in which hotel and restaurant licensed premises are located may, by ordinance, fix later closing hours for such hotel and restaurant licensed premises than are prescribed by state law or regulations of the Alcoholic Beverage Control Board for licensed premises generally, in which case the closing hours for such hotel and restaurant licensed premises as provided by ordinance of the governing body of the city shall govern [govern] with respect to such licensed premises in the city . . . Provided, under no circumstances may any such licensed premises remain open more than two(2) hours after midnight on Saturday night. (emphasis added).

This statute clearly authorizes the governing body of a city, by ordinance, to fix the closing hours for hotels, motels and restaurants which are licensed to sell alcoholic beverages pursuant to Act 132 of 1969, at a time later than that prescribed by State law or the ABC Board for licensed premises generally. Ordinance 3708 is a proper exercise of this authority with respect to hotels, motels and restaurants.

This Ordinance also purports to cover "other establishments" licensed to sell alcoholic beverages pursuant to Act 132 of 1969. I am not aware of what the nature of these "other establishments" might be, but according to §48-1412, except for the power granted to cities to regulate the hours of "hotels and restaurants," the ABC regulations and existing laws with respect to the closing hours of premises licensed under Act 132 of 1969 are to apply to such licensed premises. Consequently, if ABC has adopted regulations setting closing hours for such premises, or if there are State laws regulating closing hours of these premises, these should govern.

I am not aware of any existing law setting closing hours for premises licensed pursuant to Act 132 of 1969. If ABC has not adopted any rules regarding closing hours for premises licensed under this Act, the Ordinance may also be a valid exercise of local police power regarding any "other establishments" licensed under Act 132, other than hotels, motels and restaurants. Section 48-1412 states that nothing in Act 132 of 1969 shall be construed as limiting the power of other state or local government bodies to regulate the operation of establishments licensed under Act 132 as may be necessary to protect the public health, welfare, safety and morals. Ark. Stat. Ann. §48-901(b) arguably is limited to setting hours for sales in retail liquor outlets rather than entities licensed for "on-premises consumption" under Act 132 of 1969. If there are no existing State laws or ABC regulations setting closing hours for "other establishments" licensed under Act 132, Ordinance 3708 may be a valid exercise of local authority pertaining to those establishments. See Tempos v. City of Fayetteville, 280 Ark. 435, 658 S.W.2d 404 (1983).

Finally, Section 48-1412 specifically states that under no circumstances may a premises licensed under Act 132 of 1969 remain open for more than two(2) hours after midnight on Saturday night. Consequently, Ordinance 3708 must be amended to state that hotels, motels and restaurants may operate until only 2:00 a.m. on Sunday mornings.

My answer to your second question would be no. Ark. Stat. Ann. §48-901(b) unequivocally states that anyone selling liquor between 1:00 a.m. and 7:00 a.m. on week days shall be guilty of a misdemeanor. There is no provision

allowing a city to extend the 1:00 a.m. deadline, which is a proper exercise by the State of its police power to regulate the alcoholic beverage industry. Ark. Stat. Ann. §48-517 (Repl. 1977) states that cities and towns may pass ordinances "governing the issuance and revocation of licenses for retail sale of liquors" and "may impose additional restrictions . . . providing hours of opening and closing and such other rules and regulations as will promote public health, morals and safety . . ." This might allow a city to impose local hours which are more restrictive than those set by the State statute, but this does not authorize an ordinance which is less restrictive. In my opinion such an ordinance would be in contradiction to a State law and, thus, an improper exercise of local police power.

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

Sincerely,



STEVE CLARK
Attorney General

SC/JAB/ljm