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OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

November 6, 1985

(501) 371-2007

OPINION NO. 85-212

Honorable Joseph K. Mahony II
Arkansas House of Representatives
406 Armstrong Building
El Dorado, Arkansas 71730

Dear Representative Mahony:

This is in response to your request for an Attorney General's opinion regarding the constitutionality and validity of the following proposed ordinance to be acted upon by the Union County Quorum Court at its next meeting:

All business establishments, which have off-premises permits to sell beer, wine, malt liquor, spirituous beverages or alcoholic beverages of any kind, shall comply with the hours of operation listed below:

MONDAY THROUGH FRIDAY- 7:00 A.M. UNTIL 1:00 A.M.

SATURDAY- 7:00 A.M. UNTIL 12:00 P.M. (Midnight)

Ark. Stat. Ann. 48-204. Rules and Regulations as to hours of sale.

The Commissioner of Revenues [Director of Alcoholic Beverage Control] may adopt rules and regulations covering the hours in which vinous, spirituous or malt liquors may be sold and shall prohibit the sale thereof on election days and Sundays, provided, however, the rules and regulations of the Commissioner [Director] in this request shall not thereby conflict with the ordinances of any city or town.

It is my opinion that this ordinance would violate both State and Federal law. Ark. Stat. Ann. §48-901(b) currently prohibits any retailer from selling liquor between the hours of 1:00 a.m. and 7:00 a.m. on weekdays, or at any time on Sundays. This proposed ordinance goes beyond establishing

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hours for the sale of alcohol, and rather attempts to set the hours during which a store possessing an off-premises permit may stay open and conduct business in general. For example, this ordinance would require a grocery store which is allowed to sell beer to close its business between 1:00 a.m. and 7:00 a.m.

Article 2, Section 2 of the Arkansas Constitution provides that all men have certain inalienable rights, including that of acquiring, possessing and protecting property. The Arkansas Supreme Court has held that the right of a person to acquire, possess and protect property is inherent and inalienable, and is higher than any constitutional sanction. Young v. Gurdon, 169 Ark. 399, 275 S.W. 890 (____). The Court has held that a statute fixing wages, prices and hours of operation for barber shops violates the constitutional provisions regarding acquisition of property. Noble v. Davis, 204 Ark. 156, 161 S.W.2d 189 (____).

There is nothing in the proposed ordinance that is necessary to protect the public health, morals or safety, or that would justify the county overriding the constitutional protection to acquire and protect property. The state has already set the hours during which an establishment is prohibited from selling liquor (the same hours as stated in this ordinance), and there is no reason to require a store to completely close during those hours as long as it does not sell liquor. If it violates the law, the Alcoholic Beverage Control Division and ABC Enforcement Division can police this.

In addition, it is my opinion that such an ordinance would likely violate the Commerce Clause of the United States Constitution inasmuch as many of the stores involved would be involved in interstate commerce.

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

Sincerely,



STEVE CLARK
Attorney General

SC:JAB:dd