

Municipal regulation of sale of alcoholic beverages

Number: INFORMAL

Date: August 16, 2000

Mr. Russell A. White
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1401 East Broward Boulevard
Fort Lauderdale, Florida 33301

RE: MUNICIPALITIES--ALCOHOLIC BEVERAGES--ORDINANCES--municipal regulation of sale of alcoholic beverages.

Dear Mr. White:

Thank you for contacting this office regarding the authority of the City of Oakland Park to ban the sale of single containers of beer or wine that were originally packaged for sale as multiple packages, that is, six-packs or four-packs. The following informal comments are offered in an effort to assist you in advising your client, the City of Oakland Park.

Florida's Beverage Law is contained in Chapters 561 through 568, Florida Statutes.[1] The act regulates the following: enforcement of the Beverage Law;[2] beer;[3] wine;[4] liquor;[5] local option elections for the sales of intoxicating liquors, wines or beer;[6] and the sale of intoxicating liquors in counties where it is prohibited.[7]

The Florida Legislature has specifically empowered local governments to regulate certain specific aspects of the business of alcoholic beverage sales. Municipalities and counties are authorized to regulate the location of liquor establishments, the hours the establishments may stay open, and the sanitary conditions of these establishments.[8]

Section 562.45(2), Florida Statutes, addresses the adoption of local ordinances as follows:

"(a) Nothing contained in the Beverage Law shall be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the hours of business and location of place of business, and prescribing sanitary regulations therefor, of any licensee under the Beverage Law within the county or corporate limits of such municipality. . . .

(b) Nothing in the Beverage Law shall be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the type of entertainment and conduct permitted in any establishment licensed under the Beverage Law to sell alcoholic beverages for consumption on the premises, or any bottle club licensed under s. 561.14, which is located within such county or municipality.

(c) *A county or municipality may not enact any ordinance that regulates or prohibits those activities or business transactions of a licensee regulated by the Division of Alcoholic Beverages and Tobacco under the Beverage Law.* Except as otherwise provided in the Beverage Law, a

local government, when enacting ordinances designed to promote and protect the general health, safety, and welfare of the public, shall treat a licensee in a nondiscriminatory manner and in a manner that is consistent with the manner of treatment of any other lawful business transacted in this state. Nothing in this section shall be construed to affect or impair the enactment or enforcement by a county or municipality of any zoning, land development or comprehensive plan regulation or other ordinance authorized under ss. 1, 2, and 5, Art. VIII of the State Constitution." (e.s.)

Thus, the statute prohibits a local government from enacting an ordinance regulating or prohibiting business activities or transactions of a licensee under the Beverage Law.

Section 561.02, Florida Statutes, provides that the Division of Alcoholic Beverages and Tobacco shall supervise the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages within the state. This statute goes on to provide that:

It is the express legislative intent that the state retain primary regulatory authority over the activities of licensees under the Beverage Law within the power of the state and the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

In a case with facts similar to those you have presented, the Third District Court of Appeal in *City of Miami Beach v. Amoco Oil Company*,^[9] determined that a zoning ordinance prohibiting the sale of beer by gasoline filling stations for off-premises consumption was preempted by section 563.02(1)(a), Florida Statutes. While the ordinance in this opinion was characterized as a zoning ordinance, the court recognized that "[z]oning encompasses regulating the use to which owners may put their real property."^[10]

Florida statutes and case law prohibit a city from enacting a zoning ordinance regulating vendors of beverages for off-premises consumption. Section 563.02(1), Florida Statutes, provides for license fees for vendors of beer and includes a prohibition against zoning regulation:

"(a) Vendors operating places of business where beverages are sold only for consumption off the premises, an amount equal to 50 percent of the amount of the license tax herein provided for vendors in the same county operating places of business where consumption on the premises is permitted. *Vendors holding such off-premises sales licenses shall not be subject to zoning by municipal and county authorities.*" (e.s.)

A municipal ordinance is invalid to the extent that it attempts to regulate an area expressly preempted to state government.^[11]

You may wish to review the case law discussed above and the state statutes cited in determining whether the City of Oakland Park may ban the sale of single beer or wine containers that were originally packaged for sale as multiple packages, that is six-packs or four-packs.

I trust these informal comments may be of some assistance to you in making this determination.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] Chapter 561, Fla. Stat.

[2] Chapter 562, Fla. Stat.

[3] Chapter 563, Fla. Stat.

[4] Chapter 564, Fla. Stat.

[5] Chapter 565, Fla. Stat.

[6] Chapter 567, Fla. Stat.

[7] Chapter 568, Fla. Stat.

[8] Section 562.45(2)(a), Fla. Stat.

[9] 510 So. 2d 609 (Fla. 3d DCA 1987).

[10] *Id.* at 610.

[11] See s. 166.021(3)(c), Fla. Stat.: *City of Miami Beach v. Rocio Corp.*, 404 So. 2d 1066 (Fla. 3d DCA 1981), *pet. for rev. den.*, 408 So. 2d 1092 (Fla. 1981).