Counties -- Alcoholic Beverages -- Licensing

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Subject:
Counties -- Alcoholic Beverages -- Licensing

Ms. Shalene Grover
Attorney for Liberty County
Post Office Box 399
Bristol, Florida 32321

RE: COUNTIES – ALCOHOLIC BEVERAGES – LICENSING – REGULATION OF ALCOHOLIC BEVERAGES – county's prohibition of alcoholic beverages limited by s. 5(a), Art. VIII, Fla. Const.; regulation limited to location, hours of operation, sanitary conditions, and type of entertainment or conduct. ss. 561.701-702 and 562.45, Fla. Stat.

Dear Ms. Grover:

On behalf of the Liberty County Commission you ask the following:

1. May the county prohibit the sale of alcoholic beverages for consumption on premises within the county, including restaurants, bars, and all other facilities?

2. May the county require that alcohol sold at convenience stores or any other store be transported in a brown bag after purchase?

3. May the county limit the number of drinks which may be served to one person?

4. Should the county be unable to prohibit the sale of alcohol for consumption on premises, may the county restrict restaurants that sell alcohol to land use areas designated as commercial?

In sum:

1. The county may authorize or prohibit the sale of alcoholic beverages only through the local option provisions contained in section 5(a), Article VIII, Florida Constitution.

2 & 3. A county's authority to regulate the sale of alcohol includes designating the location of liquor establishments, the hours of operation, and the sanitary conditions of such establishments, as well as restricting the type of entertainment or conduct within establishments licensed to sell alcohol. While a county may enact an ordinance to promote and protect the general health, safety, and welfare of the public which would affect an establishment licensed to sell alcohol, such an ordinance must treat a licensee selling alcohol in a nondiscriminatory manner. It would appear, therefore, that a county may not require that alcohol be transported in a brown bag after purchase, nor may a county limit the number of drinks which may be served to

one person.

4. A county's authority to designate the location of liquor establishments through appropriate zoning regulations would appear to encompass the authority to restrict alcohol sales to restaurants located on land which is zoned for commercial purposes.

Question One

Section 5(a), Article VIII, Florida Constitution, provides the exclusive means for a county to authorize or prohibit the sale of alcoholic beverages:

"Local option on the legality or prohibition of the sale of intoxicating liquors, wines or beers shall be preserved to each county. The status of a county with respect thereto shall be changed *only* by vote of the electors in a special election called upon the petition of twenty-five per cent of the electors of the county, and not sooner than two years after an earlier election on the same question. Where legal, the sale of intoxicating liquors, wines and beers shall be regulated by law." (e.s.)

The plain language of the constitutional provision limits a county's authority to authorize or prohibit the sale of alcoholic beverages to the procedure prescribed therein and further provides that the regulation of the sale of alcohol shall be regulated by law.[1]

Questions Two and Three

Florida's Beverage Law is contained in Chapters 561 through 568 of the Florida Statutes. As provided in section 562.45(2), Florida Statutes,

"(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."

Section 562.45(2)(c), Florida Statutes, however, states:

"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 Florida Legislature prohibits local ordinances which regulate or prohibit activities or business transactions of an alcoholic beverage licensee, except in the specific areas allowing municipalities and counties to regulate the location of liquor establishments, the hours the establishments may stay open, and the sanitary conditions of these establishments, as well as the type of entertainment and conduct permitted therein. When a local government enacts an ordinance to promote and protect the general health, safety, and welfare of the public, such ordinance may not be isolated to alcoholic beverage establishments and must treat a licensee in the same manner as any other lawful business transacted within the state. When the Legislature has prescribed the manner in which something may be done, it operates as a prohibition against its being done in any other way.[2]

A county's attempt to require that alcoholic beverages purchased from a licensee be placed in a brown paper bag for transport would most likely have to be supported by a determination by the county commission that it promotes the health, safety and welfare of the general public. However, such an ordinance could not be limited to the sale of alcoholic beverages and would have to affect all licensed businesses within the county in the same manner.

An attempt to limit the number of drinks which may be served to a customer by a licensed vendor of alcoholic beverages would appear to affect the ability of a vendor to sell alcoholic beverages and, as discussed above, would be less likely to be upheld, in that such an ordinance would discriminate against a licensee. I would note, that the "Florida Responsible Vendor Act"[3] sets forth the Legislature's intent to "[e]ncourage alcoholic beverage vendors to be prudent in their serving practices" and "to implement responsible policies for serving and promoting alcoholic beverages and, by so doing, prevent the over-service of alcoholic beverages to customers and prevent the over-consumption of alcoholic beverages by customers while on the licensed premises of vendors."[4]

Question Four

Clearly, the beverage statutes recognize the county's authority to use zoning to designate where a commercial establishment serving alcohol may be located.[5] Thus it would appear that the county may require that a restaurant serving alcohol be located on land which is zoned for commercial activity.

Accordingly, it would appear that a county may regulate the sale of alcohol by designating the location of liquor establishments, the hours of operation, and the sanitary conditions of such establishments, as well as the type of entertainment and conduct permitted in a licensed establishment, but may not enact an ordinance which regulates the business transactions of a licensee. Moreover, while a county may enact an ordinance to promote and protect the general health, safety, and welfare of the public, such an ordinance must treat an alcoholic beverage licensee in the same manner as any other business and may not discriminate against the licensee.

Sincerely,

Pam Bondi
Attorney General

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[1] The phrase "by law" contemplates an enactment of the Legislature, not a county ordinance. *Grapeland Heights Civic Association v. City of Miami*, 267 So. 2d 321, 324 (Fla. 1972); *Broward County v. Plantation Imports, Inc.*, 419 So. 2d 1145, 1148 (Fla. 4th DCA 1982).

[2] *See Alsop v. Pierce*, 19 So. 2d 799, 805 (Fla. 1944) (where Legislature prescribes the mode, that mode must be observed).

[3] Section 561.701 – 706, Fla. Stat.

[4] Section 561.702(4) and (5), Fla. Stat.

[5] *See Hardage v. City of Jacksonville Beach*, 399 So. 2d 1077 (Fla. 1st DCA 1981), *review denied*, 411 So. 2d 382 (Fla. 1981) (under power to regulate location of liquor establishments, municipalities may permit one or more types of sale in designated area without being required to permit all other modes of sale).