

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

January 3, 2020

The Honorable Michael Price
Alderman at Large
Town of Sardis
Post Office Box 306
Sardis, Mississippi 38666

Re: Regulation of on-premise consumption of beer and light wine

Dear Alderman Price:

OFFICIAL OPINION

Attorney General Jim Hood received your letter of request and assigned it to me for research and reply.

Background

You state that the Town of Sardis has an ordinance that provides that light wine and beer may not be sold for consumption on-premise despite a permit from the state Department of Revenue unless a permit is also obtained from the State ABC Commission for the sale of on-premise consumption of alcoholic beverages (liquor).

Issue Presented

You ask if the Town of Sardis may require a business to get an on-premise consumption ABC Liquor License from the ABC Commission under Section 67-1-7, despite not selling alcoholic beverages, in order to be able to sell beer and light wine for consumption at the same business? In other words, is the only state license required for a business to sell beer and light wine for consumption is one issued under Section 67-3-25? May a town require a license issued under Section 67-1-7 for the sale of beer and light wine in addition to the license issued under Section 67-3-25?

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Response

Pursuant to Section 7-5-25 of the Mississippi Code, opinions of the Attorney General are issued on questions of law for the future guidance of those officials entitled to receive them. An Attorney General's opinion can neither validate nor invalidate past action of municipal governing authorities.

As a general rule, municipalities may not regulate activity that has been preempted by state law. With the exception of Section 67-3-65 of the Mississippi Code, the Department of Revenue regulates the manufacture, sale, distribution, possession and transportation of light wine and beer. See Miss. Code Ann. Sections 67-3-1, *et seq.*; MS AG Op., Lee (October 23, 1998).

The Legislature, in its passage of Section 67-3-65, expressly reserved some limited regulatory power in municipalities. Section 67-3-65, *inter alia*, authorizes municipalities to enforce such proper rules and regulations for fixing zones and territories, prescribing hours of opening and of closing, and for such other measures as will promote public health, morals, and safety, as they may by ordinance provide. Such an ordinance could include matters similar to the ones addressed in Section 67-3-25. Whether any such ordinance is a valid exercise of a municipality's power is a determination for a court of competent jurisdiction. MS AG Op., Kirk (November 8, 2002).

A municipal ordinance requiring commercial establishments holding a valid permit issued by the State Tax Commission for the sale and on-premise consumption of beer and light wine to first obtain a license for on-premise consumption of liquor from the ABC, pursuant to Sections 67-3-1 *et seq.*, would conflict with, and be preempted by, state statute.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Phil Carter
Special Assistant Attorney General