

February 5, 2001
OPINION 00-334

Honorable Jim Arbogast
Mayor Pro-Tem
P. O. Box 749
Tullos, LA 71479

55 INTOXICATING LIQUORS
R.S. 26:493, R.S. 51:191, R.S. 26:711
Town of Tullos may regulate the sale of alcoholic beverages where the regulation does not rise to a complete prohibition unapproved by the electorate.

Dear Mayor Pro Tem Arbogast:

We are in receipt of your opinion request concerning Ordinance No. 04-00 adopted by the Board of Aldermen of the Town of Tullos on October 9, 2000. The language of the ordinance pertinently provides:

Section 7.13 Closing Hours

A. No retail dealer, nor his servant, agent or employee, shall sell, offer sell, dispense or give away beverages of either low or high alcoholic content within the limits of the Town of Tullos on any legal holiday, and all days of the week except Sunday between the hours of 11:30 p.m. and 6:00 a.m. the following morning.

B. Legal holidays are defined to include:

1. Good Friday
2. The fourth Thursday of November, Thanksgiving
3. December 25, Christmas
4. All election days in LaSalle Parish Louisiana, between the hours of 6:00 a.m. and 8:00 p.m.

Be it further ordained by the Board of Aldermen of the Town of Tullos that all retail dealers, servants, agents or employees of all establishments which sell, offer to sell, dispense or give away beverages of either lower alcoholic content within the limits of the Town of Tullos shall close its operations by 12:00 midnight on all days except Sunday.

We refrain from addressing the legality of the ordinance in question, because we are of the opinion that the language of the ordinance needs to be revised in order to accomplish the goals of the Town. For instance, we are unable to ascertain whether the sale of alcohol is generally permitted during the week and Saturday, but is prohibited on Sunday. A literal reading of Paragraph A quoted above would indicate otherwise, which is an improbable result.

We can instead provide you with general jurisprudential and statutory rules governing the sale of alcoholic beverages as are pertinent to your request. The Town of Tullos may regulate the sale of alcoholic beverages heeding the limitation imposed by R.S. 26:493¹, specifically, that “no parish or municipality shall, in the exercise of its police power, regulate the business of selling such beverages more than is necessary for the protection of the public health, morals, safety, and peace.”

Note further that the governing authority of the Town of Tullos may regulate the consumption of alcohol within the town on Sundays. The issue of the validity of a Sunday ordinance limiting the sale of alcohol was addressed in the case of City of Zwolle v. Polk, 643 So.2d 201 (La. App. 3rd Cir. 1994). In Zwolle, *supra*, the court held invalid an ordinance which prohibited the sale of alcoholic beverages on Sunday which was passed by the local governing body but not approved by the voters in an election. Thus, a local governing body may by ordinance regulate the sale of alcohol on Sundays, provided the regulation does not completely prohibit the sale of alcoholic beverages.

In Liberto v. Rapides Parish Police Jury, 667 So.2d 552 (La. App. 3rd Cir. 1995), the court held that an ordinance that regulated the consumption of alcohol on Sunday was a valid exercise of the police power of a police jury, even in the absence of a local option vote. The court found this decision to be compatible with the Zwolle case, because the ordinance in question, “only prohibits the consumption of alcohol at any “house of public entertainment between two a.m. and six a.m. on Sundays.” Liberto, *supra*, at page 558.

The Zwolle and Liberto cases both stand for the proposition that only the electorate may absolutely prohibit the sale of alcohol on Sundays, pursuant to R.S. 51:191². suggested by approval of the voters.

¹ R.S. 26:493 provides:

§ 493. Local regulatory ordinances

Except as limited by the provisions of this chapter the various subdivisions of the state may regulate but not prohibit, except by referendum vote as provided by Chapter 3 of this Title or by legally authorized zoning laws of municipalities, the business of wholesaling, retailing, and dealing in alcoholic beverages. No parish or municipality shall, in the exercise of its police power, regulate the business of selling such beverages more than is necessary for the protection of the public health, morals, safety, and peace. Local subdivisions, in adopting these regulatory ordinances, may provide, in addition to the ordinary penalties authorized by law for their violation, provisions which subject the permittee to having his permit suspended or revoked in the manner provided by law for the suspension or revocation of permits.

² R.S. 51:191 provides:

§ 191. Sunday closing law; local ordinances; election

Except as provided in R.S. 51:193, the governing authority of any parish or municipality may adopt ordinances regulating or prohibiting the opening of certain businesses and/or the sale of certain stock or articles of merchandise on Sunday, if approved by the voters at an election called as provided in Chapter 6-B of Title 18 of Louisiana Revised Statutes of 1950.

Finally, we enclose a copy of Attorney General Opinion 91-659, wherein the author concluded "if a person brings his own such [alcoholic] beverages to a private club and consumes those beverages he brought, that conduct is legal."

Should you have further questions, please contact this office.

Very truly yours,

RICHARD P. IEYOUNG
ATTORNEY GENERAL

BY: _____
KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL

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Honorable Jim Arbogast
OPINION 00-334
Page 4

OPINION 00-334

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Date Received:
Date Released: February 5, 2001

KERRY L. KILPATRICK
ASSISTANT ATTORNEY GENERAL