



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

May 16, 1988

Honorable Bob McFarland  
Chairman  
Criminal Justice Committee  
Texas State Senate  
P. O. Box 12068  
Austin, Texas 78711

LO-88-56

Dear Senator McFarland:

You have told us that the City of Arlington is considering an ordinance that prohibits a person under the age of twenty-one from entering an establishment selling alcoholic beverages unless accompanied by a parent or guardian. At this point, Arlington has merely a general idea what it wishes to prohibit. No ordinance has been drafted.

You ask whether Arlington has the authority to enact an ordinance along the lines under consideration. The city has been told by its city attorney that it does not. Without the specific terms of a proposed ordinance to review, we cannot definitively advise you. We can say, however, that we share the city attorney's view that state law probably precludes drafting a valid ordinance.

In our opinion, laudable as the goals of such an ordinance might be, serious concerns about its validity would be raised by section 1.06 of the Alcoholic Beverage Code, which provides:

Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this code.

This provision preempts every aspect of the regulation of alcohol. Indeed, in its last regular session, the legislature amended the code to make its intention unmistakable

by adding in section 109.57(b): "It is the intent of the legislature that this code shall exclusively govern the regulation of alcoholic beverages in this state . . . ."

To give effect to this legislative intention, we have broadly applied section 1.06. In JM-619, we held that section 1.06 preempts an ordinance prohibiting the consumption of alcoholic beverages by persons operating motor vehicles. In JM-112 we held that section 1.06 preempts an ordinance banning open containers of alcoholic beverages in motor vehicles. In LO-88-47, we held that section 1.06 preempts an ordinance prohibiting persons from consuming alcohol on certain public sidewalks.

We likewise believe that an ordinance establishing requirements to enter a premise selling alcoholic beverages might run afoul of section 1.06. The legislature has already provided in section 109.53 of the code that a minor cannot be allowed on the premises of the holder of a package store permit unless appropriately accompanied. Presumably the legislature intends there be no further regulation of the presence of minors on premises selling alcoholic beverages.

An ordinance regulating the presence of minors might also be prohibited by section 109.57, which provides in pertinent part (emphasis added):

(a) Except as is expressly authorized by this code, a regulation, charter, or ordinance promulgated by a governmental entity of this state may not impose stricter standards on premises or businesses required to have a license or permit under this code than are imposed on similar premises or businesses that are not required to have such a license or permit.

(b) It is the intent of the legislature that this code shall exclusively govern the regulation of alcoholic beverages in this state, and that except as permitted by this code, a governmental entity of this state may not discriminate against a business holding a license or permit under this code.

Thus, the legislature has expressly prohibited a city from treating businesses licensed or permitted under the Alcoholic Beverage Code different than similar businesses that are not. An ordinance that, for example, required a

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parent to accompany a minor into a grocery store that sold alcohol, but not into a grocery store that did not, would violate section 109.57.

In summary, by legislative mandate, as set out in section 1.06 and section 109.57, the rules regarding regulation of alcoholic beverages are set forth exclusively by the Alcoholic Beverage Code. They cannot be varied or supplemented by city ordinance.

Very truly yours,

  
Rick Gilpin  
Chairman  
Opinion Committee

RG/FSM/bc

Prepared by F. Scott McCown  
APPROVED: OPINION COMMITTEE

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