



TEXAS ALCOHOLIC BEVERAGE COMMISSION

Post Office Box 13127, Capitol Station, Austin, Texas 78711-3127 (512) 458-2500 Jeannene Fox, Acting Administrator

November 27, 1991

12# 14343
MS

The Honorable Dan Morales
Attorney General
Supreme Court Building
Austin, Texas

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DEC 02 91

RQ-264

Dear General Morales,

Section 5.01 of the Alcoholic Beverage Code authorizes the Alcoholic Beverage Commission to "prescribe and publish rules necessary to carry out provisions of this code." Section 1.03 of the code states that the public policy of the code is to be "an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state. It shall be liberally construed to accomplish this purpose." Section 6.01(b) of the code further states that "A license or permit issued under this code is a purely personal privilege and is subject to revocation if the holder is found to have violated a provision of this code or a rule of the commission."

Given these premises, the Commission is considering the promulgation of a rule to create a rebuttable presumption when a certain set of facts occur with regards to the sale of alcohol to a minor. Specifically, the Commission proposes that notwithstanding Section 106.14 of the code, if a licensee or permittee or any manager, employee, agent or servant of any licensee or permittee, sells alcohol to a minor and refuses to ask the minor to show proof of age by displaying an apparently valid Texas Driver's license or an identification card issued by the Texas Department of Public Safety, he is presumed to have done so with knowledge that the person is a minor.

This presumption unless rebutted by credible evidence establishes a prima facie case of a violation under §61.71(a)(5) and §106.13(a).

The question we have is: May the Commission by rule, create such a presumption?

We believe the answer to this question to be **YES**. It is our opinion that licensees and permittee have a responsibility to not sell alcohol to any minor. This rule would simply create a rebuttable presumption that if the seller does not check for a persons age, that if that person indeed is a minor, he is guilty. The presumption of guilt may be rebutted under this rule by simply showing that an identification was requested and that the purchaser presented an apparently valid Texas Driver's license or identification card issued by the Texas Department of Public Safety. It is further our opinion that, based on the Code read as a whole, this was the intent of the legislature when they enacted Section 1.03 of the Alcoholic Beverage Code.

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**Attorney General Dan Morales
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We appreciate your consideration of this request for opinion as we feel that this a matter that is in the interest of the citizens of the state as well as the mandate of public policy under the code.

Sincerely,


Jeannene Fox
Acting Administrator

RY/cll