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March 27, 2003

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OPINION COMMITTEE

Reply Address
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Texas Attorney General
Opinion Committee
P. O. Box 12548
Austin, Texas 78711

RQ-0036-GA

FILE # ML-43044-03
I.D. # 43044

Gentlepersons:

The Town of Pecos City, Texas, a home rule municipality, has requested a response to the following questions:

1. Can a home rule municipality legally adopt an ordinance that bans sales of glass beverage containers within city limits?
2. Can a home rule municipality legally adopt an ordinance that bans sales of glass containers of alcoholic beverages within city limits?

No Texas appellate decisions have been located on the subject. The powers of a home rule city are only limited by the charter, Constitution, or general laws of the State. City of Beaumont V. Bond, 546 S. W. 2d 407 (Tex. Civ. App. 1977), writ ref'd n. r. e. A home rule city possesses the power to regulate sales of alcoholic beverages within its city limits. Hewlett V. Texas Alcoholic Beverage Commission, 492 S. W. 2d 686 (Tex. Civ. App.—Waco 1973), writ ref'd n. r. e. Accordingly, it is believed that the Town of Pecos City possesses broad powers to regulate affairs within its limits, except as proscribed by law. There is no charter provision addressing the issues presented above.

It is noted that the Alcoholic Beverage Code (hereinafter Code) exclusively governs the sale and distribution of alcoholic beverages. Code § 1.06 Additionally, the regulation of the size of containers may be undertaken by the Alcoholic Beverage Commission. Code § 109.57. Additionally, a municipality may regulate the sale of beer. Code § 109.57 (b).

Texas Attorney General

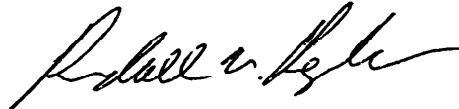
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In both of the questions presented, it is only the type of container that is proposed to be regulated. Beverages in can or plastic could still be sold. The prohibition equally applies to all retailers. While the second question applies only to alcoholic beverages, specific retailers are not singled out. Glass containers are believed by the City to constitute a health and safety hazard. Accordingly, it is believed that a home rule City's authority to regulate healthy and safety matters, within its municipal boundaries, authorize it to prohibit the retail sales of both non-alcoholic and alcoholic glass containers.

Please advise if I may be of further assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Randy W. Reynolds". The signature is fluid and cursive, with a long horizontal stroke at the end.

Randy W. Reynolds
143rd Judicial District Attorney

RWR/mag