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A CITY ATTORNEY'S GUIDE TO DISTANCE RESTRICTIONS IN BEER REGULATIONS*

by Sidney D. Hemsley

There is confusion among many Tennessee municipalities over the proper method of measuring distance requirements between beer establishments and churches, schools, and occasionally, other institutions.

There are two principal measuring methods in use: straight-line and by-the-streets. Of the two methods, the latter is probably the one most commonly found in beer regulation ordinances.

However, several Tennessee Supreme Court cases, most recently *Watkins v. Naifeh*, 635 S.W.2d 104 (1982), declare that the exclusive method of measurement to be used is the straight-line method, unless a different method is prescribed by statute. There is no statute in Tennessee prescribing the method of measurement.

In 1956 the Tennessee Supreme Court, interpreting *Tennessee Code Annotated (TCA) 57-205* (now *TCA 57-5-105*) which prohibited the sale of beer in counties within 2,000 feet of schools, churches, etc., said in *Jones v. Sullivan County Beer Board*, 200 Tenn. 301, 292 S.W.2d 185 (1956):

The general rule is, unless otherwise specifically provided by statute*, that:

The distance contemplated by a statute or regulation prohibiting the granting of a license for the sale of intoxicating liquors, or traffic therein, within a certain distance of a named institution or place (e.g. church, school, hospital, soldiers' home, training camp), must be measured in a straight line, rather than in some other manner, such as by the usually traveled route or the street lines. (Quoting from 96 A.L.R. 778).

So far as we can find, this is the rule all over the United States.

*See footnote 1 which refers back to the underlined language for explanatory purposes that will be obvious to the reader.

Then in *Serv-U-Mart, Inc. v Sullivan County*, 527 S.W.2d 121 (1975) one of the plaintiff's arguments in chancery court against the application of the 2,000 foot rule in TCA 57-205 (now TCA 57-5-105) to his beer establishment was that the distance between the establishment and a school was more than 2,000 feet measured by the public road.

To that argument the Tennessee Supreme Court responded, "*Jones v. Sullivan County Beer Board* (citations omitted) established the rule that the measurement is made in a direct line."

Three years later the Tennessee Supreme Court in *City of Murfreesboro v. Davis*, 569 S.W.2d 805 (1978) held that the City's attempt to cure its discriminatory application of a distance requirement measured by the straight-line by amending the distance requirement so that it was measured from property line to property line, "by way of the closest route between same over public streets and not crossing any property lines" was invalid. The Court reasoned that:

In *Jones v. Sullivan County Beer Board* (citations omitted) this Court established the rule that in the application of a 2,000 foot requirement authorized by the Legislature under 57-205 (now TCA 57-5-105), the measurement is made in a straight line. The rule was approved in *Serv-U-Mart, Inc. v. Sullivan County* (citations omitted).

An important aspect of the *City of Murfreesboro* for municipalities is that the Tennessee Supreme Court rejected the argument that fixing the distance requirement measuring method fell within the greater discretionary power of cities over counties under TCA 57-5-108 to fix zones and territories of beer sales, set opening and closing hours and adopt other rules and regulations that promote the public health, morals, and safety.

The chancery court had held that the city could define the method of measurement different than the straight-line method required under *Jones v. Sullivan County Beer Board*, but the Tennessee Supreme Court declared that:

Terms that have established definitions by a combination of statute and case law that must be given uniform application by the cities (emphasis mine) and counties of this State exercising the powers granted then by the Legislature to regulate the sale of beer. The power to 'otherwise specifically provide(d) by statute'¹ (sic) a method of measurement resides in the Legislature, not the cities and counties of the state. The fact that cities have been granted wider discretionary powers than counties by TCA 57-208 (now TCA 57-5-108) in the area of fixing zones and territories, providing hours of

¹Here in a footnote the Court indicates that the phrase "otherwise specifically provide(d) by statute" refers to the same phrase it used in *Jones v. Sullivan County Beer Board*, which phrase is underlined and identified by an asterisk in a discussion of that case on page 1.

opening and closing and such other rules and regulations as will promote public health, morals, and safety does not authorize municipal ordinances conflicting with these established definitions.

In *Watkins v. Naifeh*, 635 S.W.2d 104 (1982) the Tennessee Supreme Court once again reaffirmed that the method of measurement for a distance requirement is the straight-line method by reiterating the language quoted above from *City of Murfreesboro v. Davis*.

However, in *Watkins v. Naifeh* the Tennessee Supreme Court did declare that a municipality could specify the straight-line measuring points. In rejecting one of the plaintiff's arguments that a requirement had to be read into TCA 57-5-108 that straight-line measurements must be made from building to building, the Court declared that a municipality's statutory power under TCA 57-5-108 to "fix zones" includes the power to state the distances and "defining the point to which the straight-line method of measurement shall be applied."

In this case, the ordinance in question established a distance requirement of 200 feet from property line to property line as measured by the straight-line method. In short, a municipality can in its distance requirements specify buildings or property lines as measuring points, or specify certain points on property or buildings as measuring points.

Apparently, municipal ordinances containing distance requirements measured by methods other than the straight-line method are still

valid as to the distance specified in the requirement. The courts would simply apply the straight-line method of measurement as opposed to another method specified in the requirement.

Which measuring points the courts would use if the points are not specified is not entirely clear, but dicta in *Watkins v. Naifeh* also gives guidance on that question. The chancery court in that case had held that the measuring points had to be from building to building rather than from property line to property line as the City's ordinance specified. As pointed out above, the Tennessee Supreme Court overruled the chancery court on that issue, yet still went on to denounce the chancery court's method of measuring from building to building:

What we have said hereinabove also applies to the trial court's method of measurement from the closet point of Cedar Grove Baptist Church to the front (not the closest) corner of Watkin's store in arriving at a distance of over 200 feet between the buildings (The Court's emphasis) after determining that measurement had to be between buildings. This decision on the part of the trial court resulted in an arbitrary method of measurement and constituted departure from the standard, accepted measurement between the closest points in question (emphasis mine). By arbitrarily choosing any point on Watkins' store which would result in a

distance of over 200 feet from the closest corner of the church, it would cut through a large portion of Watkins' building. Even if measurement had to be between buildings rather than between property lines, the closest point on Watkins' building was shown to be less than 200 feet from the church, and he still would not have been entitled to a permit.

That strong dicta suggests that is the measuring points are not specified in the ordinance, the trial court is required to measure from the nearest points, whether they are points on buildings or points on property.

There does not appear to be any case in which a municipality that presently uses the by-the-street method in its beer regulation ordinance would be in a worse position if a court substituted the straight-line method.

In fact, the opposite is apparently true: some person might be denied a beer permit by a court applying the straight-line method who would have been granted one by the municipality applying its by-the-street method. The beneficiaries of the application of the straight-line method appear to be the protected institutions for which distance requirements are designed: churches, schools, etc.

However, it is time to end the confusion over what distance requirements actually apply in a municipality and how the distances are measured. All municipalities having or

contemplating a distance requirement in their beer regulations ordinances ought to insure that those ordinances do two things:

1. Contain the straight-line method of measuring distance requirements between beer establishments and churches, schools, etc.
2. Specify the measuring points, such as, nearest property lines, nearest building corners, etc.

Samples of two common distances requirements that meet those requirements follow.

Property Line To Property Line

No permit shall be issued for the sale (or manufacture or storage, if applicable) of beer within _____ hundred (_____) feet of any school (public or private) or church, as measured in a straight-line from the nearest property line of the school or church to the nearest property line of the property upon which the beer is sold (manufactured or stored, if applicable).

Building To Building

No permit shall be issued for the sale (or manufacture or storage, if applicable) of beer within _____ hundred (_____) feet of any school (public or private) or church, as measured in a straight-line from the nearest corner of the school or church and the nearest corner of the structure where the beer is sold (manufactured or stored, if applicable).

Other measuring points might be desired; if so, the sample can be adjusted accordingly.

A municipality probably has the authority, by ordinance, under *Cravens v. Storie, Mayor*, 175 Tenn, 285 (1939); *City of Murfreesboro v. Davis*, 569 S.W.2d 905 (1978), and a number of other cases outlining the authority of municipalities to regulate or prohibit the sale of beer, to impose the same distance requirements on current beer permit holders that it imposes on future permit applicants.

To avoid confusion over whether new, tighter distance requirements apply to current beer permit holders, they should be carefully drafted. If a municipality intends to "grandfather" current beer permit holders which do not meet the new distance requirements, the distance requirements should provide that they apply only to future beer permit applicants. Likewise, if a municipality intends to revoke or eliminate by attrition or other means the beer permits of establishment which do not meet the new distance requirements, that intent should be made abundantly clear in the new distance requirements.

FOR FURTHER INFORMATION

For further information on distance restrictions, contact Sid Hemsley, Senior Legal Consultant in Knoxville at 615/974-0411. You can also contact your MTAS Municipal Management Consultant in Knoxville at 615/974-0411; Nashville at 615/256-8141; or Jackson at 901/423-3710.

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