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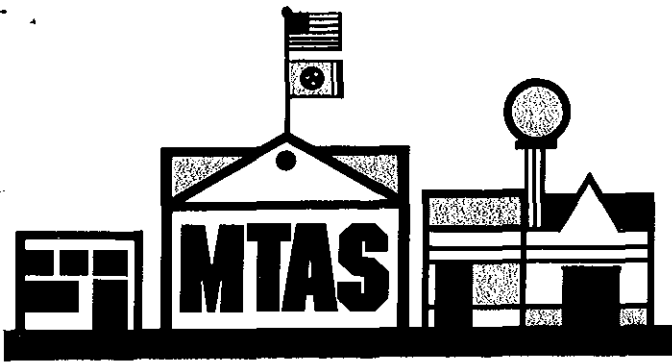
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TECHNICAL BULLETIN



MUNICIPAL TECHNICAL ADVISORY SERVICE
THE UNIVERSITY OF TENNESSEE
IN COOPERATION WITH THE TENNESSEE MUNICIPAL LEAGUE

12/1/86

A PUBLIC OFFICIAL'S GUIDE TO MEASURING DISTANCE RESTRICTIONS IN BEER REGULATIONS

By: Sidney D. Hemsley, Municipal Law Consultant

The Straight Line Method Is The Law

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, unless the state legislature provides otherwise, is the straight-line method.

Why The Straight Line Method Is The Law

The Tennessee Supreme Court made the straight-line method the rule in both Jones v. Sullivan County Beer Board, 200 Tenn. 301, 292 S.W.2d 185 (1956) and Serv-U-Mart, Inc. v. Sullivan County, 527 S.W.2d 121 (1975). However, both those cases involved the application of T.C.A. 57-205 (Now T.C.A. 57-5-105). That statute establishes an optional 2,000 foot distance requirement between beer establishments and churches and schools (without specifying the method the distance is to be measured), but only in unincorporated areas of counties. Because neither that statute nor any other statute specified the method of measuring the 2,000 feet, the straight-line method is the legal method, said the Court.

That took care of the measurement method in unincorporated areas of counties, but did the same measurement method apply to municipalities? An argument that it did not, that municipalities could establish their own measuring methods, was found in T.C.A. 57-5-108. That statute provides that municipalities have greater powers than do counties to establish certain beer regulations. The Tennessee Supreme Court in City of Murfreesboro v. Davis, 569 S.W.2d 805 (1978) agreed that a municipality indeed does have the greater power than counties to establish certain beer regulations under T.C.A. 57-5-108, but declared that the straight-line method applies to municipalities as well as counties. The Court reasoned that:

Terms that have established definitions by a combination of statute and case law must be given uniform application by the cities (Emphasis mine) and counties of this State exercising the powers granted them by the Legislature to regulate the sale of beer ... The fact that cities have been granted wider discretionary powers than counties by T.C.A. 57-208 (Now 57-5-108) in the area of fixing zones and territories, providing hours of 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. (Emphasis mine).

The authority to establish a method of measurement, declared the Court, rests in the legislature and "not the cities and counties of this state." But because the state legislature has never passed a statute defining a method of measurement, the straight line method established by the Court applies until it does, the Court concluded.

The Tennessee Supreme Court reemphasized the same rule again in Watkins v. Naifeh, 635 S.W.2d 104 (1982).

Municipalities Can Establish Measuring Points

An important thing the Tennessee Supreme Court did in Watkins v. Naifeh was to declare that a municipality can establish the straight-line measuring points under its authority found in T.C.A. 57-5-108. In other words, a municipality is bound to use a straight-line method of measurement, but it can specify points, such as property lines or buildings or specific points on property or buildings, as the points from which the straight-line will be measured.

Bringing Beer Regulations Into Line With The Law

It is time to end the confusion of public officials, beer boards, the public and those who seek beer licenses of one kind or another over what distance rules apply and how they are measured. All municipalities having distance requirements in their beer regulation ordinances should insure that their ordinances do two things:

1. Contain the straight-line method of measuring distance requirement 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 distance requirements which 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).

The Affect Of Distance Requirements On Current Beer Permit Holders

A municipality apparently has the authority, by ordinance, to impose the same distance requirements on current beer permit holders as it does on future beer permit applicants. To avoid confusion over whether new, tighter distance requirements apply to current permit holders, such requirements 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 establishments which do not meet the new distance requirements, that intent should be made clear in the new requirements.

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