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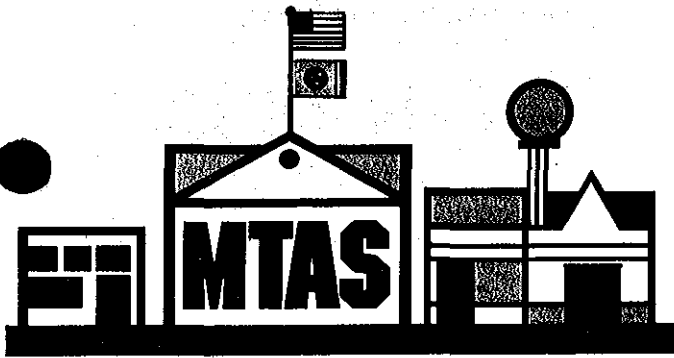
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TECHNICAL BULLETIN

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



December 17, 1986

Ordinance Prohibiting "Brown Bagging" in Beer Taverns Upheld

by

Don W. Ownby, Municipal Law Consultant

On December 8, 1986, the Tennessee Supreme Court upheld an ordinance of the Metropolitan Government of Nashville and Davidson County which makes it unlawful for the holder of a Metropolitan beer license to allow any alcoholic beverage with an alcoholic content in excess of five percent to be brought onto the licensed premises unless the establishment is also licensed to serve liquor by the drink. Metropolitan Government of Nashville and Davidson County vs Ronald D. Shaw, _____ SW2d _____ (Dec. 8, 1986).

The tavern operator was fined \$10 by the sessions court for allowing "brown bagging" in violation of the ordinance. He appealed his conviction to the circuit court where the charges were dismissed. The circuit court held that the ordinance contravened the general laws of the state and there was no rational basis for it. Metro appealed to the supreme court.

In reversing the circuit court, the Tennessee Supreme Court held that "there is no question but that a local government has a legitimate interest in diminishing the number of incidents of public drunkenness and the number of intoxicated drivers operating within the city limits." The court went on to say that: "This interest is furthered by ordinances which regulate the sale of beer for on-premises consumption, of which the anti brown bagging ordinance is a part."

The supreme court found that there was evidence in the record that "brown bagging," which is generally unregulated, is a prime cause in incidents of public drunkenness and of drivers operating automobiles while under the influence of an intoxicant. The arresting police officer testified that the "police are required to respond to many more calls to beer taverns that permit 'brown bagging' than they do to establishments that have a liquor license or have just a plain beer license." Also there was evidence that in Metropolitan Nashville beer sales had to cease generally between the hours of 3:00 A.M. and 6:00 A.M. but that "brown baggers" continued to drink during these hours.

Thus the court found that the Metro ordinance had "some relation to a legitimate interest of Metropolitan Government" and was "a valid exercise of its police power."

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