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March 25, 2020

To: UCCI Membership

Re: Dry Township in County

Issue:

If a township has previously approved a prohibition against sales at retail of alcoholic liquor, may the county override the prohibition?

Analysis:

The Liquor Control Act of 1934 (the “Act”) provides for the “control and regulation of the manufacture, sale, and distribution of alcoholic liquors.”¹ Section 4-2 of the Act provides as follows:

The mayor or president of the board of trustees of each city, village or incorporated town or his or her designee, and **the president or chairman of the county board or his or her designee, shall be the local liquor control commissioner for their respective cities, villages, incorporated towns and counties, and shall be charged with the administration in their respective jurisdictions of the appropriate provisions of this Act and of such ordinances and resolutions relating to alcoholic liquor as may be enacted; but the authority of the president or chairman of the county board or his or her designee shall extend only to that area in any county which lies outside the corporate limits of the cities, villages and incorporated towns therein and those areas which are owned by the county and are within the corporate limits of the cities, villages and incorporated towns with a population of less than 1,000,000, however, such county shall comply with the operating rules of the municipal ordinances affected when issuing their own licenses.**²

Despite being responsible for the administration of ordinances and resolutions relating to alcoholic liquor in any area in the county that lies outside the corporate limits of the cities, villages and incorporated towns therein and those areas which are owned by the county, there other limitations upon this authority. Specifically, Article 9 of the Act provides for local referenda that allow the voters

¹ 235 ILCS 5/1-2.

² 235 ILCS 5/4-2 (emphases added).

of a political subdivision to determine whether to prohibit the sale at retail of (1) alcoholic liquor, (*i.e.*, a full prohibition against sales); (2) alcoholic liquor other than beer containing not more than 4% of alcohol by weight (*i.e.*, sales other than beer); or (3) alcoholic liquor containing more than 4% alcohol by weight in the original package and not for consumption on the premises (*i.e.*, package sales).³ Where a majority of the voters voting on the proposition vote in favor of the prohibition, the identified sales at retail of alcoholic liquor shall be prohibited in the political subdivision.⁴ Pursuant to Section 9-8 of the Act, the “status of all the territory within any [township], relative to the sale at retail of alcoholic liquor, * * * shall remain the same, notwithstanding any change which may be made in the limits of any such political subdivision or precinct until the voters thereof have changed such status under the provisions of Section 9-9 of this Article, or until the voters have changed such status for areas other than annexed or disconnected areas under the provisions of Section 9-2 or Section 9-10.”⁵

Moreover, the Act expressly provides for the effect of such local referenda to prohibit sales of alcohol. Pursuant to Section 9-13, “It is unlawful to sell alcoholic liquor at retail or to grant or issue, or cause to be granted or issued, any license to sell alcoholic liquor at retail within the limits of any political subdivision or precinct or at any premises while the prohibition against such sales is in effect.”⁶ Furthermore, “**if any such license be granted or issued in violation of this section, the license shall be void.**”⁷ Additionally, the Illinois Attorney General has previously opined that even the State of Illinois “may not issue a retail license to a concessionaire in a State park located in a dry territory.”⁸

Conclusion:

For the foregoing reasons, it is the opinion of this office that a county may not “override” the effects of a township local referendum in order to issue a liquor license and that any license issued by a county contrary to a local referendum is void.

At the request and direction of UCCI this opinion was prepared by
GIFFIN, WINNING, COHEN & BODEWES, P.C.



Herman G. Bodewes



Jason E. Brokaw

³ 235 ILCS 5/9-6

⁴ 235 ILCS 5/9-7

⁵ 235 ILCS 5/9-8

⁶ 235 ILCS 5/9-13

⁷ 235 ILCS 5/9-13 (emphasis added)

⁸ 1979 Ill. Atty. Gen. Op. 139 at p. 2 (1979)