



STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

BOISE 83720

JIM JONES
ATTORNEY GENERAL

TELEPHONE
(208) 334-2400

July 9, 1987

James E. Montgomery
Chief of Police
Boise City Police Department
P.O. Box 500
Boise, ID 83701

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE

Re: Regulation of the Hours of Sale of Alcoholic Beverages

Dear Chief Montgomery:

In your letter of June 4, 1987, you request our advice concerning the authority of a city to regulate the hours of sale of beer and liquor by the drink. Specifically, your question asks:

Does a city council have the authority, under Idaho law, to establish bar closing hours which may be more restrictive than those hours established by a county ordinance?

The hours of sale of liquor and beer are regulated by two statutes. Idaho Code § 23-927 regulates the hours of sale of liquor, permitting such sales between the hours of 10:00 a.m. and 1:00 a.m. of the following day, with exceptions made for Sundays, holidays and other significant times. However, § 23-927 additionally provides that:

[a] county may, however, by ordinance, allow the sale of liquor by the drink on a Sunday, Memorial Day and Thanksgiving, and may also extend until 2:00 A.M. the hours of the sale of liquor by the drink.

The sale of beer is regulated by Idaho Code § 23-1012 which limits sales to between the hours of 6:00 a.m. and 1:00 a.m. of the following day. As with § 23-927, this provision also allows a county to extend the hours of sale to 2:00 a.m. Cities, however, are given concurrent authority to regulate the hours of

James E. Montgomery
Chief of Police
Boise City Police Department
Page 2

sale of liquor and beer within their own boundaries. Idaho Code §§ 23-927 and 23-1014.

Although a county may extend the hours of operation for the sale of liquor and beer, the regulations are not enforceable within city limits. Clyde Hess Distributing Co., et al. v. Bonneville County, et al., 69 Idaho 505, 210 P.2d 798 (1949). The legislature has the authority to make action by a county a condition precedent to action by a city, but such a regulation is not a general law for a municipality. Id. at 511-512. Thus, if a city so desires, it may extend its hours of sale of liquor and beer to 2:00 a.m., but only after a county has acted on the question through a county ordinance.

Concurrently, the city has the authority to restrict the hours of sale to something less than 2:00 a.m., such as the 1:00 a.m. closing time suggested in your letter. This action by a city is supported in the case of Taggart v. Latah County, 78 Idaho 99, 298 P.2d 979 (1956). In that case, the court held that where restrictions on the hours of sale merely add limitations, are not unreasonable or discriminatory, and do not act prohibitively, such restrictions fall within the proper exercise of police power by a city and are not in conflict with the general laws of the state. 78 Idaho at 104. The Hess case and the Taggart cases were expressly upheld in Russell, et al. v. Teton City, 102 Idaho 349, 630 P.2d 140 (1981).

Thus, in direct answer to your question, the city may establish closing hours more restrictive than those hours established by the county ordinance. Additionally, a city may adopt a 2:00 a.m. closing time, but only after the county has acted to extend the hours in its own ordinance.

If you have any questions, please do not hesitate to contact our office.

Sincerely,

Daniel G. Chadwick

DANIEL G. CHADWICK
Acting Chief
Intergovernmental Affairs
Division

DGC/mkf

cc: James Weatherby, Association of Idaho Cities
J. Charles Holden, Idaho Association of Counties