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October 9, 2024

Senator Jimmy Higdon
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Dear Sen. Higdon:

You recently wrote the Department to ask about the potential for a “wet/dry” election in Summerville, an unincorporated precinct in Green County. Specifically, you forwarded the following question from your constituent:

“Hey do you know how the law goes on voting a precinct wet in a dry county if you have enough votes to get the precinct voted wet for restaurants? Green county is dry but city is wet and the golf course which is not in the precinct is wet. Trying to get mixed drinks and beer in restaurant in Summerville.”

The sale of alcoholic beverages by the drink at retail in restaurants is only permissible if there is a successful “wet” local option election in a territory under KRS 242.125, or if there is a successful “limited restaurant” local option election in a territory under KRS 242.1244. Unfortunately, as explained below neither of these local option elections are available at the precinct level.

Holding a local option election requires a petition to be circulated and signed within the territory it is to be held. Kentucky Revised Statutes 242.020(1) states:

“A petition for an election shall be signed by a number of constitutionally qualified voters of the territory to be affected, equal to twenty-five percent (25%) of the votes cast in the territory at the last preceding general election. The petition may consist of one (1) or more separate units, and shall be filed with the county clerk in accordance with this section.”

“Territory” is defined as a “county, city, district, or precinct.” KRS 241.010(68). Reviewing the remaining language of KRS 242.020 reveals no express prohibition against a local option election being held in any one of these territories, and some citizens have therefore interpreted KRS 242.020 to implicitly authorize a local option wet election in any county, city, district, or precinct.

However, this interpretation ignores other statutes within KRS Chapter 242, as well as a longstanding decision of the Kentucky Supreme Court. When all relevant portions of the law are examined in full, it is clear that KRS 242.020 does not authorize local option elections; rather, it sets the process for calling a local option election authorized by other statutes in KRS Chapter 242.

A. Kentucky law does not permit a local option wet election in an unincorporated precinct in a dry county.

The Kentucky Supreme Court held in *Howard v. Salyer*, 695 S.W.2d 420, 425 (Ky. 1985), “It is apparent to us that in all its manifestations KRS 242.020 is a procedural section and merely provides a vehicle to set in motion procedures to call an election where authorized by the substantive portion of KRS Chapter 242, that is, KRS 242.125.” KRS 242.125 was repealed and replaced in 2013, but it serves the same purpose regarding wet and dry elections now as it did in 1985. That is, KRS 242.125 defines the circumstances under which territories can call a local option wet or dry election.

Under KRS 242.125, a precinct can call a local option wet election under only one circumstance: “If a city precinct becomes dry or moist territory separate from a wet city, the city precinct may hold a later election in conformity with this chapter, to take the sense of the city precinct residents for reestablishing the city precinct as a wet territory.” KRS 242.125(7). The preceding subsection provides the circumstances allowing a city precinct to vote to remain dry. KRS 242.125(6).

This limitation on precinct-level local option wet elections makes sense as part of the statutory scheme in KRS Chapters 241 to 244. KRS 241.066 and 241.067 set the number of quota retail package licenses in counties and cities, respectively. Each provides a number of quota licenses as a function of the territory’s—namely, a county or city’s—population, beginning at 1 for every 2300 residents, with a minimum of 2. No similar statute for precincts or districts exists.

Additionally, before 2022, KRS 242.1292 provided a process for precinct-level local options for “limited sale precincts” that allowed the retail sale of alcoholic beverages by the drink and by the package in otherwise dry cities. If precincts could have held local option wet elections without condition, there would have been no need for the authorization KRS 242.1292 to exist. Nor, for that matter, would there be a need for KRS 242.125(7) to authorize dry precincts in wet cities to vote to go wet.

In *Howard v. Salyer*, the Kentucky Supreme Court determined that a district-level local option wet election was improperly called, “The county judge executive had no authority to call an election in the third magisterial district in Magoffin County.” 695 S.W.2d at 426. Unless and until the legislature changes the law, the same will be true for any precinct-level local option wet election not described in KRS 242.125(7). That is, the only precincts that can hold local option wet elections are city precincts holding elections to join the wet status of the city in which they are located.

B. Kentucky law does not permit a limited restaurant local option election in an unincorporated precinct in a dry county.

There are no statutes other than KRS 242.125(7) in KRS Chapter 242 that authorize a precinct to call a local option wet election. However, your constituent’s inquiry sought information about “get[ting] mixed drinks and beer in restaurant[s] in Summerville.” KRS 242.1244 is the authorizing statute for local option moist elections to permit the sale of alcoholic beverages by the drink at restaurants of either 50 or 100 seat or greater capacities. Unfortunately, it does not authorize such local option elections at the precinct level. *See e.g.* KRS 242.1244(1)(a) (“In order to promote economic development and tourism, a dry or moist city, county, urban-county government, charter county, consolidated local government, or unified

local government may hold a local option election on the sale of alcoholic beverages by the drink at restaurants that seat a minimum of fifty (50) persons...”).

There are several statutes that authorize local option moist elections for the sale of alcoholic beverages at certain kinds of businesses at the precinct level in KRS Chapter 242. Those statutes include KRS 242.022 (qualified state parks), KRS 242.122 (marinas), KRS 242.123 (golf courses), KRS 242.1238 (horse racetracks), KRS 242.1239 (microbreweries), KRS 242.124 (small farm wineries), KRS 242.1243 (distilleries), and KRS 242.1242 (qualified historic sites). Each of these local options, if successful, would permit the retail sale of alcoholic beverages by the drink at the designated locations, which may include restaurants. However, there is no way to hold a local option election to authorize retail drink sales at restaurants unattached to these designated locations.

I hope this answers your questions. If you have any further questions regarding alcoholic beverage law in the Commonwealth, please do not hesitate to ask.

Sincerely,



Allyson Taylor
Commissioner
Department of Alcoholic Beverage Control