

December 12, 2006

Mr. David L. Smith
City of Tampa Attorney
315 East Kennedy Boulevard
Fifth Floor
Tampa, Florida 33602

Re: Request for legal opinion

Dear Mr. Smith:

Your request to the Office of the Attorney General for a legal opinion was forwarded to the Department of Business and Professional Regulation. You ask whether the Florida Beverage Law preempts the City of Tampa from adopting an ordinance that prohibits the special pricing of alcoholic beverages for consumption on the premises.

Chapter 97-165 amended Section 561.02, F.S., to clearly state the legislative intent:

It is the express legislative intent that the State retain primary regulatory authority over the activities of licensees under the beverage law within the power of this state and the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation.

Additionally, Chapter 97-165 further created subsection (2)(c) of Section 562.45, F.S. This section provides in part:

A county or municipality may not enact any ordinance that regulates or prohibits those activities or business transactions of a licensee regulated by the Division of Alcoholic Beverages and Tobacco under the beverage law.

The second sentence of subsection 561.45(2)(c), F.S., enacted by Chapter 97-165, provides:

Except as otherwise provided in the beverage law, a local government, when enacting ordinances designed to promote and protect the general health, safety and welfare of the public, shall treat a licensee in a nondiscriminatory manner and in a manner that is consistent with the manner or treatment of any other lawful business transacted in the state.

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The ordinance that the City of Tampa proposes to enact which prohibits special pricing of alcoholic beverages for consumption on premises would be contrary to section 562.45(2)(c), F. S.

The Florida Senate, Committee on Regulated Industries, Interim Project Summary 2007-135, November 2006, issued a statement on "Underage Drinking and Alcohol Abuse on University and College Campuses." Although not directly addressing the issue set forth by the City of Tampa, the study does address the issue of "regulating drink specials". The report recommends that the legislature amend s. 562.45(2)(a), F.S., to provide that counties and municipalities are authorized to enact ordinances regulating drink specials, including the advertisement of drink specials.

The recommendation that a statutory amendment is required is consistent with the division's position that the current law preempts regulation of drink specials to the state.

The ordinance would also appear to be precluded by section 166.043, F.S., which prohibits price controls on lawful businesses which are not franchised, owned or under contract to the City.

Subsection 166.043, F.S., (1)(a) states:

"Except as hereinafter provided, no county, municipality, or other entity of local government shall adopt or maintain in effect an ordinance or a rule which has the effect of imposing price controls upon a lawful business activity which is not franchised by, owned by, or under contract with, the governmental agency, unless specifically provided by general law."

Should additional information be desired, please advise.

Sincerely,


Josefina M. Tamayo
General Counsel