



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN, TEXAS 78711**

**WAGGONER CARR  
ATTORNEY GENERAL**

September 8, 1966

Honorable William D. Pratt  
County Attorney  
Palo Pinto County  
Mineral Wells, Texas

Opinion No. C-754

Re: Validity of Ordinance  
of the City of Mineral  
Wells which makes it  
unlawful to sell alco-  
holic beverages on  
Sunday in the city  
limits.

Dear Mr. Pratt:

You recently requested an opinion of this office concerning the validity of the following ordinance adopted by the City of Mineral Wells making it unlawful to sell beer or any alcoholic beverage on Sunday in the city limits of Mineral Wells, Texas.

The pertinent parts of the ordinance are as follows:

"4. It shall be unlawful for any person to directly or indirectly sell, offer for sale, barter, offer to barter, exchange, or offer to exchange, give, or offer to give, deliver, or offer to deliver, serve, or offer to serve, beer or any alcoholic beverage, by retail for consumption on or off the premises, within the corporate limits of the City of Mineral Wells, in Palo Pinto County, Texas, between the hours of 1:00 A.M. of any Sunday and 7:00 A.M. of the following Monday morning.

"5. Any person violating any provision of this Ordinance shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than \$25.00, and not more than \$200.00, and each day of such violation shall constitute a separate offense."

The authority of cities to regulate the sale of beer is found in Article 667-10 1/2, Vernon's Penal Code.

The pertinent part of such statute is as follows:

"All incorporated cities and towns are hereby authorized to regulate the sale of beer within the corporate limits of such cities and towns by charter amendment or ordinance, and may thereby prescribe the opening and closing hours for such sales; such cities and towns may also designate certain zones in the residential section or sections of said cities and towns where such regulations for opening and closing hours for the sale of beer shall be observed or where such sales may be prohibited. All incorporated cities and towns and all Commissioners Courts when acting under authority of this section are hereby authorized in adopting charter amendments, ordinances, or orders to distinguish between retailers selling beer for consumption on the premises where sold and those retailers, manufacturers or distributors selling not for consumption on the premises where sold, and to provide for separate and distinct regulations. Nothing herein shall authorize any incorporated city or town to extend by ordinance or charter the hours of sale as fixed by the state law."

The foregoing statute gives cities the authority to shorten the hours of sale of beer as fixed by State law. The statute further gives cities the authority to prohibit the sale of beer in a particular area. Moore v. McCarver, 240 S.W.2d 443 (Tex.Civ.App. 1951).

State law prohibits the sale of beer on Sunday at any time between the hours of 1:00 o'clock A. M. and 1:00 o'clock P.M., and on any day except Sunday at any time prior to 7:00 o'clock A.M. Article 667-10, V.P.C. The punishment prescribed by State law for selling beer within the prohibited hours is a fine of not less than \$100.00 and not more than \$1,000.00, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment. Article 667-26, V.P.C.

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A city ordinance that prescribes a different and lesser punishment than that fixed by the State law for the same unlawful act is void. Ex parte Watson; 225 S.W.2d 850 (Tex.Crim. 1949).

The Court of Criminal Appeals, in Young v. State, 267 S.W.2d 423 (Tex.Crim. 1954), declared a city ordinance of the City of McGregor, which was very similar to the ordinance before us, void because it attempted to provide a lesser punishment than provided by State law for selling beer on Sunday between the hours of 1:00 o'clock A.M. and 1:00 o'clock P.M. and on Monday prior to 7:00 o'clock A.M. The Court recognized the right and authority of the City to prohibit by ordinance the sale of beer on Sunday from 1:00 o'clock P.M. to midnight on Sunday, but struck down the entire ordinance because it included hours on Sunday and Monday that were prohibited by State law with a greater penalty than provided in the ordinance.

The Young case, supra, is squarely in point with the question before us, and therefore the Mineral Wells Ordinance submitted to us is void for the reasons set forth in such case.

SUMMARY

A city ordinance that prescribes a different and lesser punishment for selling beer during prohibited hours than that fixed by Article 667-10, V. P.C., for the same unlawful act is void.

Yours very truly,

WAGGONER CARR  
Attorney General of Texas

By: Douglas H. Chilton  
DOUGLAS H. CHILTON  
Assistant Attorney General

DHC/br

APPROVED:

OPINION COMMITTEE

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