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TIME, STANDARD OF OHIO—BOARD OF LIQUOR CONTROL—STATUTES AND REGULATIONS—HOURS INTOXICATING LIQUORS MAY BE LAWFULLY SOLD—MUNICIPALITY—“DAYLIGHT SAVINGS TIME”—STANDARD OHIO TIME, NOT ADVANCED TIME, SHALL GOVERN—SECTION 5979 G. C.

SYLLABUS:

The time referred to in the statutes and regulations of the Board of Liquor Control, prescribing the hours during which intoxicating liquors may be lawfully sold, is the standard time of Ohio as defined in Section 5979 of the General Code, and, consequently, the hours of the day during which intoxicating liquors may be lawfully sold in an establishment located in a municipality which has adopted so-called “daylight savings time” are to be determined by standard Ohio time and not by the advanced time adopted by the municipality in which such establishment is located.

Columbus, Ohio, May 21, 1948

Hon. Paul V. Waddell, Prosecuting Attorney
Belmont County, St. Clairsville, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“I would appreciate an opinion on the matter of the opening and closing of establishments wherein intoxicating liquors sold in the municipalities of our county.

“On April 1st daylight savings time went into effect in our county and since licenses are regulated by Eastern Standard Time, I would appreciate an opinion from you as to how the new time affects the opening and closing of these establishments and whether they should now be regulated by the standard time or abide by the time now in effect in their respective municipalities.”

While your letter states that on April 1 daylight savings time went into effect in your county, I assume that since there is no authority for a county to adopt a standard of time other than that fixed by statute you mean thereby that daylight savings time was adopted as a standard of time by certain municipalities in your county under the powers conferred upon them by the Constitution.

The provisions of law fixing the standard of time for the State of Ohio are set out in Section 5979 of the General Code, which section reads:

“The standard time throughout this state shall be the mean astronomical time of the seventy-fifth degree of longitude west from Greenwich. Courts, public offices and official legal proceedings subject to the laws of this state shall be regulated thereby. Whenever the time of performance of any act, or the time of accrual or determination of any rights, is fixed or governed by the statutes of this state or by any resolutions, rules, regulations or orders in effect under the authority thereof, such time shall be the standard time provided in this act.

“All clocks maintained in or upon public buildings, existing as such under the laws of this state, shall be set and run according to the provisions of this act.”

It will be noted that the above section provides that whenever the time of performance of an act is fixed or governed by the statutes of Ohio, or by any rules or regulations made under the authority of said statutes, the standard of time fixed in this section shall apply.

In Section 6064-15, General Code, it is provided:

“* * * No sales of intoxicating liquor shall be made by a holder of a D-3 permit after the hour of one a. m. * * *

“In addition to all other fees herein provided, the holder of a D-3 permit shall pay an additional fee of four hundred dollars whenever his place of business is operated after the hour of one a. m. and spirituous liquor is sold or consumed after such hour. The holder of such permit may sell spirituous liquor during the same hours as the holders of class D-5 permits are allowed under the liquor control act or the regulations of the board of liquor control.

“If the holder of D-3a permit is also the holder of a D-1 permit, he may sell beer after the hour of one a. m. and during the same hours as the holder of a D-5 permit; of the holder of a D-2 permit, he may sell intoxicating liquor after the hour of one a. m. and during the same hours as the holder of a D-5 permit. The holder of a D-3a permit may furnish music and entertainment to his patrons, subject to the same regulations as govern D-5 permit holders.”

Regulation No. 30 of the Board of Liquor Control of Ohio, as the same is presently in force, reads:

"No beer or other malt beverages shall be sold by or be permitted to be consumed on week days upon the premises of a C-1, C-2, D-1, D-2, or D-4 permit holder between the hours of 1:00 A. M. and 5:30 A. M.

"No wine, prepared highballs, cocktails or other mixed drinks, as defined in the amended Liquor Control Act, shall be sold or be permitted to be consumed on week days upon the premises of an A-2, C-2, D-2, or D-4 permit holder between the hours of 1:00 A. M. and 5:30 A. M.

"No beer or intoxicating liquor shall be sold or be permitted to be consumed on week days on the premises of a D-3a or D-5 permit holder between the hours of 2:30 A. M. and 5:30 A. M. and no intoxicating liquor shall be sold or be permitted to be consumed on week days on the premises of a D-3 permit holder between the hours of 1:00 A. M. and 5:30 A. M.

"No beer or intoxicating liquor shall be sold or be permitted to be consumed on week days on the premises of a D-4 permit holder between the hours of 1:00 A. M. and 5:30 A. M.

"No intoxicating liquor may be sold by or be permitted to be consumed on the premises of any permit holder during the hours between 1:00 o'clock A. M. on Sunday and Sunday midnight, except on the premises of a D-3a or a D-5 permit. As to holders of these excepted classes, no sales of intoxicating liquor shall be made after 2:30 A. M. on Sunday.

"No beer whether by the package or by the glass shall be sold or delivered or be consumed on the premises of a permit holder on Sunday between the hours of 1:00 A. M. and 5:30 A. M. except on the premises of a holder of a D-3a or D-5 permit. As to these excepted classes neither shall sell or permit to be consumed on the premises, beer after 2:30 A. M. on Sunday."

Authority for the adoption of the above regulation is set out in Section 6064-3 of the General Code in the following language:

"The board of liquor control shall have the power except as otherwise provided in this section:

"1. To adopt and promulgate, repeal, rescind, and amend, in the manner herein required, rules, regulations, standards, requirements, and orders necessary to carry out the provisions of this act, including the following: * * *

"(i) Rules, regulations and orders consistent with the provisions of this act, with reference to sales of beer and intoxicating liquor on Sundays and holidays and with reference to the hours of the day during which and the persons to whom intoxicating liquor of any class may be sold, and regulations with reference to the manner of sale."

Therefore, since the time for the opening and closing of establishments wherein intoxicating liquors are sold under permits issued by the Department of Liquor Control is fixed by statute and by regulation adopted pursuant to statutory authority, it would appear, and it is accordingly my opinion that the standard of time prescribed by Section 5979 of the General Code is controlling with respect to the opening and closing of such establishments, whether or not the same are located in municipalities which, under the home rule powers conferred upon them by the Constitution, have adopted a different standard of time than that prescribed by statute.

Respectfully,

HUGH S. JENKINS,
Attorney General.