

2451

1. WHEREAS PROVISION (D) OF 4301.22 BANS SALE OF INTOXICATING LIQUOR ON DAY OF GENERAL ELECTION IT DOES NOT PROHIBIT SALE OF SAME ON DAY OF SPECIAL ELECTION—SECTION 4301.22, R. C. DOES NOT APPLY TO SALES OF LIQUOR ON ELECTION DAY UNDER ALL CLASSES OF PERMITS AND FROM STATE LIQUOR STORES

2. ELECTIONS IN MUNICIPALITIES DURING AUGUST, SEPTEMBER AND OCTOBER FOR NOMINATING CANDIDATES FOR MUNICIPAL OFFICES ARE SPECIAL ELECTIONS AND SAID DIVISION (D) DOES NOT APPLY—§§4301.22, 4301.65, 3501.01, R.C.

SYLLABUS:

1. The provision of division (D) of Section 4301.22, Revised Code, banning sales at retail of intoxicating liquor on a primary or general election day between the hours of six a.m. and seven-thirty p.m., does not preclude such sales on the dates of special elections held on other than a primary or general election day as defined in Section 3501.01, Revised Code; and the provisions of Section 4301.65, Revised Code, as regards sales of intoxicating liquor on election days do not apply to sales of intoxicating liquors under all classes of permits and from state liquor stores.

2. Elections held in municipal corporations during the months of August, September, and October, for the purpose of nominating candidates for municipal offices, are special elections, and said division (D) does not preclude sales at retail by state liquor stores in such municipal corporations on the days of such elections.

Columbus, Ohio, August 11, 1961

Hon. R. C. Crouch
 Director, Department of Liquor Control
 Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“As you know the action of the 103rd General Assembly in enacting into law Amended Substitute House Bill No. 1107 changed the provisions of Section 4301.22 (D) of the Revised Code relating to the sales of intoxicating liquor on election days.

“I have learned that various municipalities situated in the State of Ohio are contemplating holding primary elections during the months of August, September, and October, 1961.

“I am therefore requesting a formal opinion from you as Attorney General, setting forth the law governing the opening or closing of State Liquor Stores for retail sales on such dates or on the first Tuesday after the first Monday in May of each year.”

Division (D) of Section 4301.22, Revised Code, reads, in part, as follows:

“Sales of beer and intoxicating liquor under all classes of permits and from state liquor stores are subject to the following restrictions, in addition to those imposed by the rules, regulations, or orders of the department of liquor control:

“* * * * * * * * * * * * * * *”

“(D) No sales of intoxicating liquor shall be made after two-thirty a.m. Sunday or at retail on a primary or general election day between the hours of six a.m. and seven-thirty p.m.

“* * * * * * * * * * * * * * *”

Prior to the amendment of Section 4301.22, *supra*, in 1959 (128 Ohio Laws, 128), the pertinent language of said division (D) read:

“(D) No sales of intoxicating liquor shall be made after two-thirty a.m. on Sunday or on election day between the hours of six a.m. and seven-thirty p.m.

“* * * * * * * * * * * * * * *”

Thus, where the ban against sales of intoxicating liquor formerly applied “on election day,” it now applies to a “primary or general election

day.” The question to decide is whether this change in language affects the sale of intoxicating liquor on the day of a primary election held in a municipal corporation in August, September, or October.

As to elections, Section 3501.01, Revised Code, reads in part:

“As used in the sections of the Revised Code relating to elections:

“* * *

* * *

* * *

“(D) ‘Special election’ means any election other than the elections required to be regularly held on the day of a general or primary election, provided that a special election may also be held on the day of a general or primary election.

“(E) ‘Primary’ or ‘primary election’ means an election held for the purpose of nominating persons as candidates of political parties for election to offices, and for the purpose of electing persons as members of the controlling committees of political parties and as delegates and alternates to the conventions of political parties. Primary elections shall be held on the first Tuesday after the first Monday in May of each year.

“* * *

* * *

* * *”

While under division (E), *supra*, primary elections are to be held on the first Tuesday after the first Monday in May of each year, municipal corporations under their home-rule powers (Section 3 of Article XVIII, Ohio Constitution) may set other dates for elections in which candidates for office will be nominated.

The ban contained in former Section 4301.22, Revised Code, clearly applied to *all* elections, including municipal elections held on other than the first Tuesday after the first Monday in May. Now, however, said section specifies primary or general elections, and it appears to follow that the words “primary election” should be interpreted to apply to only those elections defined in division (E) of Section 3501.01, Revised Code.

In addition to the fact that division (E) of Section 3501.01, *supra*, specifically defines “primary election,” it must be noted that under division (D) of that section any election not regularly held on the day of a primary or general election is a special election; and an election held in August, September, or October for the purpose of nominating candidates for municipal offices must, therefore, be considered a special election under the statute.

Since Section 4301.22, *supra*, definitely refers to primary and general election days, I am of the opinion that the definitions of Section 3501.01, *supra*, clearly apply. I must conclude, therefore, that said Section 4301.22,, *supra*, does not preclude retail sales of intoxicating liquor at state liquor stores in municipal corporations on the dates of elections held in such municipal corporations during August, September, and October for the purpose of nominating candidates for municipal offices.

In reaching the above conclusion, I might note that I am aware of Section 4301.65, Revised Code, reading :

“No person, not authorized to do so, shall sell or give away intoxicating liquor on any election day between five a.m. and seven-thirty p.m.”

While this section does relate to certain sales of intoxicating liquor on any election day, I do not believe that it applies to the instant situation. Section 4301.22, *supra*, deals specifically with restrictions applying to sales of beer and intoxicating liquor “under all classes of permits and from state liquor stores.” Section 4301.65, *supra*, on the other hand is a general statute dealing with sales of intoxicating liquor by persons not authorized to do so. Further, even if said Section 4301.65 were construed to apply to all sales of intoxicating liquor, it is a general rule that a special statutory provision which applies to a specific subject matter constitutes an exception to a general statutory provision covering other subject matter as well as the specific subject matter (*Fisher Bros. Co., v. Bowers*, 166 Ohio St., 191, at 196). Under that rule, the provisions of Section 4301.22, *supra*, take precedence over the provisions of Section 4301.65, *supra*, as far as retail sales made by state liquor stores are concerned.

In conclusion, it is my opinion and you are advised :

1. The provision of division (D) of Section 4301.22, Revised Code, banning sales at retail of intoxicating liquor on a primary or general election day between the hours of six a.m. and seven-thirty p.m., does not preclude such sales on the dates of special elections held on other than a primary or general election day as defined in Section 3501.01, Revised Code; and the provisions of Section 4301.65, Revised Code, as regards sales of intoxicating liquor on election days do not apply to sales of intoxicating liquors under all classes of permits and from state liquor stores.

2. Elections held in municipal corporations during the months of August, September, and October, for the purpose of nominating candidates for municipal offices, are special elections, and said division (D) does not preclude sales at retail by state liquor stores in such municipal corporations on the days of such elections.

Respectfully,
MARK McELROY
Attorney General