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State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
70804-9005

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OPINION 15-0040

71 Municipalities

55 Intoxicating Liquors-Local Option

La. R.S. 26:493 and La. R.S. 26:581 *et seq.*

Gary Presswood, Chief of Police
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Blanchard Police Department
Town of Blanchard, LA 71009

The Town of Blanchard became "dry" by local option election held on January 17, 1981 and the Town's "dry" status remains unaltered by the subsequent creation of Election District 1 and the effect of the application of La. R.S. 26:583 rendering the unincorporated areas of Ward 3 "wet." The Town of Blanchard will remain "dry" until such time as a local option election is held in accordance with the Local Option law resulting in a "wet" vote and corresponding ordinance.

Dear Chief Presswood:

You have requested an opinion concerning the validity of Ordinance No. 2 of 1981 "An Ordinance Prohibiting the Sale of Alcoholic Beverages" ("Ordinance No. 2") of the Town of Blanchard, Louisiana (the "Village of Blanchard" at the time the Ordinance was adopted). Ordinance No. 2 prohibits the sale of alcoholic beverages in the Town of Blanchard as follows:¹

Section 2: It shall be unlawful for any person, firm or corporation to sell, barter, exchange, or deal in alcoholic beverages, or for any person or any employee of any person, firm or corporation to sell, barter, exchange, give away, serve, dispense, deliver or otherwise dispose of, or permit to be consumed, alcoholic beverages upon the premises where business is conducted by such person, firm or corporation, within the confines of the incorporated area of the Village of Blanchard.

According to the information provided to us, the aldermen for the Village of Blanchard passed Ordinance No. 2 on March 23, 1981. You inform us that there are no records of the Ordinance being introduced at a public meeting, published in a local journal, or being discussed in a public hearing at an open meeting of the Board of Aldermen. It appears that the Ordinance was simply voted on and passed during the special meeting of the Mayor and Board of Aldermen on March 23, 1981.

In conjunction with your request, you provided a copy of the minutes of a special meeting of the Mayor and Board of Alderman of March 23, 1981, concerning Ordinance No. 2, showing that it was adopted upon unanimous vote of the Board of Aldermen. Also provided are minutes of an earlier regular meeting held on March 10, 1981, that

¹ Section 5 of Ordinance No. 2 provides that it shall become effective on April 5, 1981 at 12:01 a.m.

include an entry noting that "Attorney Snell advised the Council the Courts had upheld the vote of the people on the alcohol election and ruled it valid. The Council will act on an ordinance at a later date." We are further informed that the "alcohol election" refers to the Ward 3 vote in which the ward voted "dry." It is our understanding that it is this "dry" status that was at issue in *King v. Caddo Parish Com'n*, 31,098 (La. App. 2 Cir. 12/22/98), 727 So.2d 545 (discussed *infra*). We have additionally obtained the Proces Verbal and Resolution documents of the Police Jury of Caddo Parish pertaining to the Ward 3 (and Ward 6) election of January 17, 1981. Those documents reflect that the majority of qualified electors of Ward 3 voted "dry," as did the majority of qualified electors of "precinct 2, Inside Blanchard." You tell us that no other information has been located related to Ordinance No. 2's adoption after having conducted a search of the records six months prior to and after its adoption.²

Specifically, you ask for an opinion as to whether Ordinance No. 2 was passed in compliance with the procedures that were required by the Lawrason Act in 1981 for enacting such an ordinance and, if not, whether Ordinance 2 may be simply removed from the Book of Ordinances of the Town of Blanchard as invalid (presumably to convert Blanchard's status to "wet"). However, the issue is really whether the Town of Blanchard's status is "wet" or "dry." We believe that this essential question is answered by reference to the law applicable to local option elections to prohibit or permit alcohol sales, regardless of the status of the Ordinance. See Chapter 3 of Title 26, "Local Option," La. R.S. 26:581 *et seq.*

Statutory and jurisprudential authority dictates that a municipality cannot by ordinance simply declare itself to be "dry."³ Louisiana Revised Statute 26:493 requires that a prohibition of the sale of alcoholic beverages within a municipality must be accomplished by referendum vote. A referendum vote must be in accordance with Chapter 3 of Title 26, entitled "Local Option," La. R.S. 26:581 *et seq.* An ordinance prohibiting the sale of liquor, without the predicate local option election, is of no force or effect.⁴ At the time of the 1981 Ward 3, Caddo Parish election, La. R.S. 26:582 provided:

Upon petition of not less than twenty-five percent of the qualified electors residing in any parish, ward or any incorporated municipality the governing authority shall order a referendum election to be held to determine

² The opinion rendered herein is predicated upon the facts and information presented, and if presented with different or additional facts or information, this opinion could change.

³ When the electorate of a political entity votes to prohibit the sale of alcoholic beverages, that political entity is considered "dry"; similarly, when the electorate of a political entity votes to permit the sale of alcoholic beverages, the political entity is considered "wet." *Sabine Parish Police Jury v. Commissioner of Alcohol and Tobacco Control*, 04-1833 (La. 4/12/05) 898 So.2d 1244, at page 1245, n.1.

⁴ See La. Atty. Gen. Op. No. 09-0195 (Sept. 24, 2009)(also providing a good summary of the requirements contained in the Local Option law, R.S. 26:581 *et seq.*); See also *Sabine*, at 1248, n.10; *Outpost Travel Centers v. Webster Parish Police Jury*, 44,738 (La. App. 2 Cir. 8/19/09); *Tolar v. State*, 315 So.2d 22 (La. 1975); *Froeba v. State, Department of Public Safety, Office of Alcoholic Beverage Control*, 369 So.2d 727 (La.App. 3 Cir. 1979), *writ denied*, 371 So.2d 615 (La. 1979).

whether or not the business of manufacturing, producing, rectifying, distilling, blending, using, storing, distributing and selling alcoholic beverages, shall be conducted and licensed therein.

In the case of such an election held on other than a parish-wide basis the election shall be separately called and held, and the result separately binding for each incorporated municipality, and for the unincorporated balance of the ward. In the case of an election called on a parish-wide basis the result shall be binding on the entire parish.

No such election shall be held for the same subdivision oftener than once in every two years.⁵

Louisiana Revised Statute 26:587 prescribes now, as it did at the time of the election in 1981, the form of the proposition of a local election and also provides, in pertinent part, that "...in such an election when a ward contains an incorporated municipality, the issue shall be separately determined for the municipality and for the unincorporated balance of the ward...." Louisiana Revised Statute 26:595 provides that "[w]hen the majority of qualified electors voting in an election held under the provisions of this Chapter determine that any or all of the businesses described shall not be licensed, the governing authority calling the election may provide for the prohibition by ordinance, and may provide penalties for the violation of the ordinance."

In our telephone conversation you clarified that Ordinance No. 2 was passed based on the results of Ward 3 vote called by the Police Jury that prevailed among voters in Blanchard. As you mentioned, the resulting "dry" status of the unincorporated areas of Ward 3 was the subject of litigation in *King v. Caddo Parish Com'n*, 31,098 (La. App. 2 Cir. 12/22/98), 727 So.2d 545, wherein the Second Circuit Court of Appeal considered the issue of the effect of the merger of Ward 3 into the newly created Election District 1 under La. R.S. 26:583. As stated by the Court in *King*:

The issue is whether the 1997 law allows the "dry" status of old ward three [determined in a local option election before the restructuring of the parish governing body] to continue after old ward three is encompassed in a larger election district, at least until a local option election is held in the larger election district. This appeal is not concerned with the wet or dry local option status of an incorporated municipality. We omit "municipality" in quoting the statute.⁶

After defining *election district* and authorizing election districts to conduct a local option election, the 1997 law [Act 330] declares in La. R.S. 26:583:

⁵ See Acts 1974, No. 41, Section 1, amending and reenacting certain provisions of Title 26.

⁶ The court in *King* did not otherwise explain why it did not address the effect of the merger issue on municipalities.

A. When a portion of a ward, [or] election district, ... *is annexed or made a part of another ward, [or] election district, ... the portion annexed or made a part of shall take on the legal sales characteristics, as provided in this Chapter, of the ward, [or] election district, ... to which it is annexed or made a part of.*

B. *The provisions of this Section shall be applicable to any election previously called under this Title or any other local option law and to any territory covered by such election* which has subsequently been merged with another ward, [or] election district, ... or portion thereof or whose boundary has been changed, *it being the intention of this Chapter that the sale of beverages covered by this Title be permitted or prohibited only in an entire ward, [or] election district, ... and not in any portion thereof.*

C. Notwithstanding the provisions of Subsections A and B of this Section, any package house in existence and operating as such on August 15, 1995, in an area that is subsequently annexed into a ward, election district, municipality, or city-parish government that prohibits the sale of alcoholic beverages shall be allowed to continue operation and shall not be subject to the provisions of Subsections A and B of this Section. (Our emphasis.)

As is shown by the attached exhibits, the language in the 1997 law first appeared in 1968 *and has since been continued* in several reenactments with later amendments.⁷

After reviewing the legislative history of the Local Option law and the appearance of election districts to replace wards as the political unit from which parochial officers are elected, the court in *King* found that “[a] restructured or newly created ward, or election district, respectively, as the case may be, is “wet” until a local option election produces a dry vote and resulting ordinance in the respective entity.” *Id.* at 549 (emphasis in original).⁸ *King* held that the local option election in Ward 3 by which it had voted “dry”

⁷ *King v. Caddo Parish Comm'n*, 31,098 (La. App. 2 Cir. 12/22/98), 727 So. 2d 545, 546-47. (Emphasis in original.)

⁸ The Second Circuit in *King* stated further that:

Any part or “any territory” that is “made a part of” a [parish governing body district] “shall take on the legal sales characteristics, as provided in [the local option law] of the [district] to which it is annexed or made a part of ... it being the intention of this Chapter that the sale of [alcoholic] beverages be permitted or prohibited only in an entire ward [or] election district....” The law applies to “any election previously held under” Title 26. Former § 583 A and B, Act 472 of 1982, Act 596 of 1987. See § 583 A and B, Act 330 of 1997, summarized in unpublished Appendix C.

King, 727 So. 2d at 549.

was negated by the restructuring and the 1997 re-enactment and amendments of the local option law, La. R.S. 26:581 *et seq.*⁹

As you may have noticed in the language quoted from *King* above, however, the Second Circuit expressed that the “appeal [was] not concerned with the wet or dry local option status of an incorporated municipality” and it purposely omitted references to municipalities in its quotation of the statutory language. *Id.* at 546. At issue in *King* was the change of a governing authority of the parish—from Ward 3 into Election District 1. The Proces Verbal and Resolution of the 1981 election show that, in accordance with La. R.S. 26:587, there were separate vote totals considered for the municipalities (including Blanchard) and for the unincorporated balance of Ward 3. Therefore, according to La. R.S. 26:582, the unique results were separately binding for each incorporated municipality (including Blanchard) and for the unincorporated balance of the ward.

Although the change in the governing authority from ward to election district triggered the application of the merger statute, La. R.S. 26:583, to render the unincorporated areas of Ward 3 “wet,” there was no such change to and mandated effect upon the incorporated municipality of Blanchard. Therefore, its “dry” status based on the 1981 election continued to be separately binding on Village/Town of Blanchard. Though the Second Circuit gave no explanation, we believe that the stand-alone nature of the vote affecting the incorporated municipality was the reason that the court excluded incorporated municipalities from its analysis in the *King* case and declined to apply the effect of the application of the merger statute to the incorporated areas of Ward 3.¹⁰

⁹ Subsequent to *King*, the Supreme Court of Louisiana considered a similar situation in *Sabine Parish Police Jury vs. Commissioner of Alcohol & Tobacco Control*, 898 So.2d 1244 (La. 2005), where, pursuant to the local option election held in Ward 3 of Sabine Parish and subsequent ordinance by the Sabine Parish Police Jury on March 16, 1977, Ward 3 was voted “dry” by local option election. Thereafter Sabine Parish restructured itself to a system where its governing authority was elected by election districts and no longer wards. After discussing the *King* case, the Supreme Court stated:

In an area where the governing authority of a parish is no longer elected from wards, but by election district, then the operative entity for local option purposes is the election district even where the wards have not been formally abolished and may still exist for some purposes such as taxing... *Id.*, at p. 20.

Therefore, any denial of a permit based on a previous local option election must fall before the effects of merger provided in La. R.S. 26:583... *Id.*, at p. 21.

Since there has never been a local option election in Election District 6 prohibiting the sale of alcoholic beverages, we find that the entirety of Election District 6, including the portion of Ward 3 which was voted “dry” in a previous local option election, is deemed “wet” and must permit the sale of alcoholic beverages. *Id.*, at p. 22.

See *also*, e.g., La. Atty. Gen. Op. Nos. 07-0069 and 06-0028.

¹⁰ *Cf.* La. Atty. Gen. Op. 05-0258A (concluding that local option ordinances of the municipalities of DeRidder and Merryville were valid and unaffected by the creation of election districts within parishes

As the *King* and *Sabine* decisions show, the effect of the merger statute, La. R.S. 26:583, is that Election District 1, including the unincorporated area of former Ward 3, became "wet" with the change in election districts and will remain "wet" until a local option election produces a "dry" vote and a corresponding resolution or ordinance promulgating the election results is passed.¹¹ However, La. R.S. 26:583 does not apply to the Town of Blanchard as an incorporated municipality within the merged area, and we have not been given any information to show that there has been any subsequent local option election for the Town of Blanchard. It is the election results and their promulgation that effect the status of a municipality as "dry" under La. R.S. 26:594. Thus, we are of the opinion that the January 17, 1981 election results and the promulgation of those election results by the resolution of the governing authority calling the election, the Caddo Parish Police Jury, established the status of Blanchard as "dry." The "dry" status of the Town of Blanchard based on the 1981 vote of its people cannot be effectively converted to "wet" by a determination of the Board of Aldermen that Ordinance No. 2 of 1981 is invalid and its subsequent removal from the Town's Book of Ordinances.

It is the opinion of this office that the Town of Blanchard became "dry" by the January 17, 1981 local option election and the Town's "dry" status remains unaltered by the subsequent creation of Election District 1 and the effect of the application of La. R.S. 26:583 rendering the unincorporated areas of Ward 3 "wet." The Town of Blanchard will remain "dry" until such time as a local option election is held in accordance with the Local Option law resulting in a "wet" vote and a corresponding resolution or ordinance is promulgated.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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ATTORNEY GENERAL

BY:

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JDC:DJS

which formerly elected police jurors on a ward basis, noting that local option elections for municipalities were held on a city-wide basis rather than on the basis of municipal election districts).

¹¹ La. R.S. 26:594 requires that "[t]he governing authority calling the election shall promulgate the result by resolution or ordinance adopted at its first regular meeting after the election and shall publish it in the official journal of the parish."