

STATE OF MISSISSIPPI



JIM HOOD  
ATTORNEY GENERAL

OPINIONS  
DIVISION

February 1, 2019

Dana Burcham, City Clerk  
City of Nettleton  
124 Short Avenue  
Nettleton, Mississippi 38858

Re: Regulation of alcoholic beverages and beer and light wines

Dear Ms. Burcham:

Attorney General Hood is in receipt of your request for an official opinion, and it has been assigned to me for research and reply.

### Background

Your request states, in part:

The City of Nettleton is divided between Lee and Monroe Counties. The Lee County side of the city is wet and able to sell alcoholic beverages. However, the Monroe County side is dry and therefore the sales of alcoholic beverages are prohibited.

After additional discussion with you, it is our understanding that your reference to "alcoholic beverages" includes those defined in Section 67-1-5(a) as well as beer and light wine as defined in Section 67-3-3.

### Questions Presented

Question (1): Being that our city is divided, would the vote to allow for the sales of alcoholic beverages need to be on a citywide ballot (Lee County and Monroe County combined), or would the vote only be taken on the Monroe County side of the city?

Question (2): Would a vote taken need to be strictly on a city election/special referendum ballot or could this be combined with a county/state election ballot as a special referendum?

### Applicable Law and Analysis

Sections 67-1-1, *et seq.*, of the Mississippi Code set forth the regulation of certain alcoholic beverages in the State of Mississippi. Section 67-1-5(a) defines "alcoholic beverage" as any alcoholic liquid, including wines of more than five percent (5%) of alcohol by weight but does not include light wine and beer as defined in Section 67-3-3. A municipality located in a county which voted against coming out from under the dry law may vote to permit the sale of alcoholic beverages in accordance with Section 67-1-14. Specifically, Section 67-1-14(2)(b) provides a procedure by which a city split by two counties – one which is wet and the other dry – may hold an election in the portion of the city which is dry in order to come out from under the county dry law. However, in order for a municipality to exercise this option, it must meet a population threshold of not less than 6,000. It is our understanding that the City of Nettleton has a population of approximately 1,936; therefore, the City does not qualify to exercise this option.

Sections 67-3-1, *et seq.*, regulate the sale and manufacture of light wines and beer. Section 67-3-3 defines "beer" and "light wine" and reads:

(d) "Beer" means a malt beverage as defined in the Federal Alcohol Administration Act and any rules and regulations adopted pursuant to such act of an alcoholic content of not more than eight percent (8%) by weight.

(e) "Light wine" means wine of an alcoholic content of not more than five percent (5%) by weight.

Section 67-3-9 describes the process by which a city meeting certain criteria may permit or prohibit the sale of beer or light wine. The statute reads, in part:

Any city in this state, having a population of not less than two thousand five hundred (2,500) according to the latest federal census; or any city in this state having a population of not less than one thousand five hundred (1,500) according to the latest federal census and located within three (3) miles of a city or county that permits the sale, receipt, storage and transportation for the purpose of sale of beer or light wine; at an election held for the purpose, under the election laws applicable to such city, may either prohibit or permit, except as otherwise provided under Section 67-9-1, the sale and the receipt, storage and transportation for the purpose of sale of beer and light wine. An election to determine whether such sale shall be permitted in cities wherein its sale is prohibited by law shall be ordered by the city council or mayor and board of aldermen or other governing body of such city for such city only, upon the presentation of a petition for such city to such governing board containing the names of twenty percent (20%) of the duly qualified voters of such city asking for such election. In like manner, an election to determine whether such sale shall be prohibited in cities wherein its sale is permitted by law shall be

Dana Burcham, City Clerk  
February 1, 2019  
Page 3

ordered by the city council or mayor and board of aldermen or other governing board of such city for such city only, upon the presentation of a petition to such governing board containing the names of twenty percent (20%) of the duly qualified voters of such city asking for such election. No election on either question shall be held by any one (1) city more often than once in five (5) years.

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(Emphasis added.)

Under Section 67-3-9, the City of Nettleton meets the population and geographic threshold to hold an election to determine whether the sale of beer and light wine should be permitted. Unlike Section 67-1-14, Section 67-3-9 does not set forth a process for conducting an election when a city is divided between wet and dry counties. Therefore, we conclude that if the City wishes to exercise this option, the election would be conducted citywide.

In response to your second question, municipal elections are conducted by municipal election commissions, and county and state elections are conducted by county election commissions. Accordingly, a municipal local option election should be conducted separately from a county or state election.

Please let us know if this office can be of further assistance.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Elizabeth S. Bolin  
Special Assistant Attorney General