



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

July 24, 1957

This Opinion
Affirms Opinion

V-1121

Honorable Stanley Kacir
County Attorney
Bell County
Belton, Texas

Opinion No. WW-189

Re: Does Attorney General's Opin-
ion No. V-1121 apply to the
issuance of a Beer Retailer's
On-Premises License to a non-
profit, no capital stock,
Texas corporation?

Dear Sir:

You have requested our opinion as to the applicability of Attorney General's Opinion No. V-1121 to the provisions of Section 5 (2) (h), Article 667, Vernon's Penal Code. More specifically, your inquiry concerns whether a non-profit corporation having no capital stock can qualify for a beer retailer's on-premise license under the above section, which reads in part as follows:

"Section 5.

"Any person may file an application for a license as a Manufacturer, Distributor or Retail Dealer of beer in vacation or in termtime with the County Judge of the county in which the applicant desires to engage in such business. The County Judge shall refuse to approve the application for such license if he has reasonable grounds to believe and finds any of the following to be true:

". . .

"2. If a Distributor or Retailer:

". . .

"(h) If a corporation, that the applicant is not incorporated under the laws of this State; or that at least fifty-one percent (51%) of the stock of such corporation is not owned at all times by citizens who have resided within this State for a period of three (3) years and who possess the qualifications required of other applicants for licenses; . . ."

Opinion V-1121 involved a determination of a similar problem concerning package store permits under the terms of Section 18 of Article 666, Vernon's Penal Code, which is as follows:

"Section 18.

"No person who has not been a citizen of Texas for a period of three (3) years immediately preceding the filing of his application therefor shall be eligible to receive a permit under this Act. No permit shall be issued to a corporation unless the same be incorporated under the laws of the State and unless at least fifty-one percent (51%) of the stock of the corporation is owned at all times by citizens who have resided within the State for a period of three years and who possess the qualifications required of other applicants for permits; . . ."

In our opinion the provisions of Section 5 (2) (h) of Article 667, and Section 18 of Article 666 are identical in requiring that a corporation be both a domestic corporation and be owned to the extent of 51% of its capital stock by residents of Texas who possess the qualifications required of other applicants for permits or licenses. Section 18 of Article 666 states the requirement positively, and states that no permit shall issue unless both requirements are fulfilled. Section 5 (2) (h) of Article 667 states the same requirements negatively, and provides that the County Judge shall refuse to issue a license if either of the requirements are found not to exist.

This office, in Opinion V-1121, held that a non-profit, no capital stock corporation could not qualify for a package store permit. We here reaffirm the reasoning and holding of that opinion and apply it to the present inquiry as a basis for our present opinion. For your convenience we have attached a copy of Opinion V-1121.

You are therefore advised that, applying the construction and reasoning of Opinion V-1121, a non-profit, no capital stock corporation cannot qualify for the issuance of a beer retailer's on-premise license under the provisions of Section 5 (2) (h) of Article 667, Vernon's Penal Code. If such a corporation were to apply for such a license it would be the mandatory duty of the County Judge to refuse to approve the application under the above Section of the Liquor Control Act.

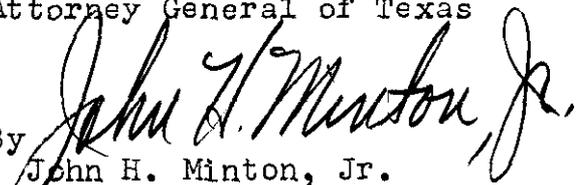
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SUMMARY

A beer retailer's on-premise license may not be issued to a non-profit, no capital stock corporation because such corporation cannot qualify under Section 5 (2) (h) of Article 667, V.P.C.

Yours very truly,

WILL WILSON
Attorney General of Texas

By 
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APPROVED:

OPINION COMMITTEE

H. Grady Chandler, Chairman
C. K. Richards
Marvin Thomas

REVIEWED FOR THE ATTORNEY GENERAL

BY: Geo. P. Blackburn