

Texas Court Strikes Down Prohibition on Payments for Brand Rights

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Late last week, a district judge in Texas declared unconstitutional under the Texas Constitution a provision of the state's Beer Industry Fair Dealing Law (*i.e.*, the beer "franchise" law) that expressly prohibits a brewer from accepting a payment in exchange for a grant of territorial distribution rights. Section 102.75(a)(7) of the Texas Alcoholic Beverage Code, enacted in 2013, applies generally to "manufacturers," including both in-state brewers and out-of-state brewers holding nonresident manufacturer's licenses in Texas. In 2014, three small Texas brewers – Live Oak Brewing Company, Revolver Brewing and Peticolas Brewing Company – sued the Texas Alcoholic Beverage Commission (TABC) and its executive director, Sherry Cook, arguing that Section 102.75(a)(7) violates the Texas Constitution.

In a short summary order, the district court judge agreed. The court found that Section 102.75(a)(7) violates the Texas Constitution's "Due Course of Law" provision, Texas' analog to the US Constitution's Due Process Clause, which states that a Texas citizen may not "be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." Tex. Const. Art. I, § 19.

The court granted the plaintiff breweries' motion for summary judgment on their Due Course of Law argument and enjoined the TABC and Ms. Cook (and their respective employees, agents and successors) from enforcing Section 102.75(a)(7) against the plaintiffs and any other brewers. The court dismissed the plaintiffs' claim that Section 102.75(a)(7) amounted to a taking of private property in violation of the Texas Constitution, though, and also dismissed the plaintiffs' request for attorney's fees.

Although the judge's order did not contain any detail regarding her reasoning, the case restores an important opportunity for brewers distributing – or interested in distributing – beer in Texas. Further, although the TABC may appeal, the decision should remind state legislatures that state restrictions on the conduct of private parties in the alcohol industry in the name of protecting the three-tier system must still pass muster under federal and state constitutional principles.

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