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March 9, 2012

Mr. Jeff Doty
210 Meadowlane Drive
Aberdeen, MS 39730

RE: Cal-City Grocery – Ordinances of the Town of Caledonia, etc.

Dear Jeff:

I thought I would write you a letter and send a copy to all concerned in reference to the above referenced matter.

I never ceased to be amazed about ordinances, laws and grandfather clauses. When a town or a city or other political subdivision passes a law (at the state level it is called legislation or law – at the local level it is considered ordinance – law).

The ordinance has effect immediately except for entities or businesses or individuals currently engaged in business or other lawful activities completely in compliance with all laws of the local, state, etc. before the new ordinance/law is implemented.

In 1945 Caledonia passes an Ordinance regulating the sale of beer within 1,500 feet of a church or the "schoolhouse". Thereafter in 1982, the Town ordered beer sales and only of hot beer. Any entity in existence at that time, within 1,500 feet of a church or the schoolhouse, or selling beer would have been "grandfathered in" and in 1982 anyone selling beer cold would have been "grandfathered in". There is a clause guaranteeing this called "the ex post facto clause" in Article 3 of the United States Constitution and Section 16 of the Mississippi Constitution of 1890. Simply put laws are prospective not retroactive.

When a new business opens, it has to be in compliance with all laws, and the Mississippi Department of Revenue will, prior to allowing beer to be sold, make sure the licensee of "any license obtained" is in compliance with the ordinances of the City (if they are within a municipality) or the county (if they are within the county).

Caledonia's Mayor and Board of Aldermen have obviously taken the position, upon Cal-City closing in the fall of 2011, and had not re-opened as of mid-February 2012; anytime it opened thereafter, would be considered a new business. That business would have to follow the ordinances of the Town of Caledonia in effect at the time when the "business opened".

I do not anticipate the Mayor or Board of Aldermen filing any complaint with any Court or with the Mississippi Department of Revenue which governs licensing. However, having lived in Caledonia a good part of my life, and you can rest assured, someone will make a complaint at some point to the Alcohol Beverage Control Division of the Department of Revenue or the appropriate law enforcement forum.

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As far as your criticism of "some clerk having to take the minutes" for a meeting to be legal, is somewhat absurd. There are 271 municipalities in Mississippi and approximately 150 of same, have the minutes taken and transcribed by the town attorney. In fact I have done the minutes for the Town of Caledonia since 1997 and I would suppose every meeting held since then was an illegal meeting.

Title 25 of the Mississippi Code of 1972 deals with "executive sessions" and allows executive sessions to be held to discuss approximately seven different matters. One matter would be discussion of litigation, pending litigation or possible litigation. I would welcome any comment any attorney you might employ, on same. However, that is of little importance, as the vote to allow you to be considered "grandfathered in" failed and was in open session.

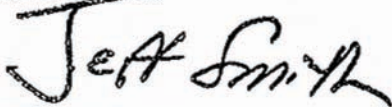
I would suggest you open your business, knowing the contents of this letter. You open your business at your own peril, if you intend to sell beer, if it is part and partial of your ability to make a profit. I would think your selling of beer would be short lived at best, however that is for you to decide and not me.

I write this, to put you on notice, of what may happen in this matter. I have no personal grudge or dislike for you. I certainly do not let any of my personal opinions interfere with my knowledge of the law. I have practiced law thirty years and being in the Legislature for the last twenty. For further clarification, I am presently Chairman of the Mississippi House of Representatives Ways and Means Committee. I work very closely with the Mississippi Department of Revenue (formerly the State Tax Commission) day in and day out, and have a working knowledge of the contents of this correspondence.

Do as you see fit, however do not let it be said, you were not warned of possible consequences if you act as you stated on March 6, 2012.

Sincerely,

SIMS & SIMS



Jeffrey C. Smith
JCS/sew

cc: Honorable George Gerhart ✓
Honorable Bill Darnell ✓
Honorable Glenda Willis ✓
Honorable Quinn Parham ✓
Honorable Mike Savage ✓
Honorable Steve Honnoll ✓
Honorable Steve Wallace ✓