



OFFICE OF THE ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2025-20

The Honorable Julie Daniels
Majority Floor Leader
Oklahoma State Senate, District 29
2300 N. Lincoln Boulevard, Room 421
Oklahoma City, OK 73105

December 18, 2025

Dear Leader Daniels:

This office has received your request for an Attorney General Opinion in which you ask, in effect, the following questions:

- 1. Does title 37A, section 2-146(B) of the Oklahoma Statutes—which provides that a wine-and-spirits wholesaler under common ownership with a beer wholesaler is not subject to the limitations on business type that would otherwise apply to the wine-and-spirits wholesaler in the absence of such common ownership—conflict with limitations set forth in article 28A, section 4 of the Oklahoma Constitution?**
- 2. May the Oklahoma Alcoholic Beverage Laws Enforcement Commission (“ABLE Commission”) deny a license application that complies with all statutory requirements based on the agency’s belief that the Oklahoma statute providing such requirements is unconstitutional?**

I.
SUMMARY

Earlier this year, the Legislature amended the Oklahoma Alcoholic Beverage Control Act, 37A O.S.2021 & Supp.2025, §§ 1-101–8-101, to provide that corporations, limited liability companies, and similar business entities that hold a beer wholesaler license are also eligible to hold a wine-and-spirits wholesaler license. *See* Senate Bill 1031, 2025 Okla. Sess. Laws ch. 422, § 1. At its core, your first question asks whether the new legislation violates the Oklahoma Constitution. The answer is no.

Under article XXVIII-A, section 4 of the Oklahoma Constitution, only a sole proprietor or partnership may be issued a wine-and-spirits wholesaler license. But the limitation is not absolute:

section 4(B) expressly authorizes certain exceptions by reference to provisions found later in section 4. Relevant to your question, section 4(D) categorically exempts beer wholesalers from any restrictions on entity ownership. Harmonizing the two subsections, a wine-and-spirits wholesaler licensee that shares common ownership with a beer wholesaler is entitled to the benefit of section 4(D)—meaning that the common owner of both wholesalers may be a corporation, limited liability company, or similar business entity.

Next, Oklahoma caselaw definitively answers your second question. As an administrative agency, the ABLE Commission lacks authority to adjudicate the constitutionality of legislation and therefore may not decline to issue a wholesaler license because of its own view of the constitutionality of licensing statutes.

II. BACKGROUND

Oklahoma repealed alcohol prohibition in 1959, when the state’s voters amended the Oklahoma Constitution to approve alcohol sales.¹ *See Action Wholesale Liquors v. Okla. Alcoholic Beverage Laws Enf’t Comm’n*, 463 F. Supp. 2d 1294, 1297 (W.D. Okla. 2006); *State ex rel. Hart v. Parham*, 1966 OK 9, ¶ 14, 412 P.2d 142, 148. In 1984, Oklahomans adopted further constitutional changes that included the establishment of the present-day ABLE Commission. *See Inst. for Responsible Alcohol Pol’y v. State ex rel. Alcoholic Beverage Laws Enf’t Comm’n*, 2020 OK 5, ¶ 3, 457 P.3d 1050, 1052. The ABLE Commission “is the body generally charged with enforcement of the alcoholic beverage laws of Oklahoma.” *Ledbetter v. Okla. Alcoholic Beverage Laws Enf’t Comm’n*, 1988 OK 117, ¶ 2, 764 P.2d 172, 175.

The 1984 constitutional amendments also created “Oklahoma’s three-tier system for alcohol distribution,” under which “alcohol manufacturers (first tier) can only sell to licensed Oklahoma wholesalers (second tier); licensed Oklahoma wholesalers (second tier) can only sell to licensed retailers (third tier); and licensed retailers (third tier) can only sell to consumers.” *Inst. for Responsible Alcohol Pol’y*, 2020 OK 5, ¶ 3, 457 P.3d at 1052. This Opinion deals only with the second tier—wholesalers—which “are not allowed to sell or ship direct to consumers,” *Action Wholesale Liquors*, 463 F. Supp. 2d at 1297, and which “must . . . obtain licenses through the state.” *Retail Liquor Assoc. of Okla. v. Okla. Alcoholic Beverage Laws Enf’t Comm’n*, 276 F. Supp. 3d 1230, 1233 (W.D. Okla. 2017).

Additional major changes to alcohol regulation came in 2016, when “the Oklahoma Legislature passed a joint resolution to place State Question 792 on the November 2016 ballot.” *Inst. for Responsible Alcohol Pol’y*, 2020 OK 5, ¶ 4, 457 P.3d at 1052–53. The people of Oklahoma overwhelmingly adopted State Question 792, and “it went into effect on October 1, 2018.” *Id.* ¶ 4, 457 P.3d at 1053. While the ABLE Commission remains, “State Question 792 repealed Article 28 of the Oklahoma Constitution, replacing it with Article 28A and fundamentally changed how Oklahoma regulates the sale and distribution of alcohol.” *Id.* “The Legislature also passed

¹ Both this office and Oklahoma courts have recounted in detail the state’s lengthy history of regulating the sale of alcohol. *See, e.g., Inst. for Responsible Alcohol Pol’y v. State ex rel. Alcoholic Beverage Laws Enf’t Comm’n*, 2020 OK 5, ¶¶ 3–4, 457 P.3d 1050, 1052–53; 2019 OK AG 13, ¶¶ 7–8.

companion legislation in Title 37A of the Oklahoma Statutes to create Oklahoma’s new alcohol regulatory scheme.” *Id.*

Relevant here, section 4 of Article XXVIII-A limits who may obtain retail spirits licenses, wine-and-spirits wholesaler licenses, and beer wholesaler licenses. The companion legislation enacted in title 37A, section 2-146 of the Oklahoma Statutes enumerates the grounds upon which the ABLE Commission shall grant or deny those licenses. As previously stated, the Legislature amended section 2-146 during the 2025 session to add a new subsection with the following language: “A beer distributor licensee and wine and spirits wholesaler licensee under common ownership shall not be limited in the types of business entities which may obtain a wine and spirits wholesaler license.”² 37A O.S.Supp.2025, § 2-146(B). The amendment also provides that “[n]othing in this subsection shall be construed to apply to a retail spirits license due to the need for strict liability related to sales directly to consumers and in the interest of public safety.” *Id.*

III. DISCUSSION

A. Article XXVIII-A, section 4 of the Oklahoma Constitution does not restrict the types of business entities that may obtain a wine-and-spirits wholesaler license when sharing common ownership with an exempt beer wholesaler.

Your first question concerns the interpretation of the state constitution. Article XXVIII-A, section 4 of the Oklahoma Constitution limits who may obtain various licenses to sell alcohol. It contains five subsections. Relevant to your question, section 4(B) sets out two limitations on who may obtain a wine-and-spirits wholesaler license. First, a license “shall only be issued to a sole proprietor who has been a resident of this state for at least five (5) years immediately preceding the date of application for such license, or a partnership in which all the partners have satisfied the same residency requirement.” OKLA. CONST. art. XXVIII-A, § 4(B). Second, a license “shall not be issued to a corporation, limited liability company or similar business entity.” *Id.* Each of these two limitations is subject to the caveat: “except as otherwise provided in this section.” *Id.* That is, the residency and entity-type limitations for a wine-and-spirits wholesaler license do not apply where otherwise stated in section 4.

Both sections 4(C) and (D), in turn, provide exceptions to the broad limitations of section 4(B). For its part, subsection 4(C) allows a wine-and-spirits wholesaler licensee—*i.e.*, one “specified in subsection B of this section”—to “enter into an agreement with a corporation, limited liability company or similar business entity that would otherwise be prohibited from obtaining a license in this state under this section,” so long as certain conditions are met. OKLA. CONST. art. XXVIII-A, § 4(C). Pertinent to your inquiry, section 4(D) provides that the limitations contained in section 4(B) do not apply to beer wholesalers. It states in full: “The provisions of subsection B of this section shall not apply to beer wholesalers. A wholesaler of beer shall not be subject to any residency requirements and shall not be limited in the types of entities which may own such wholesalers.” *Id.* § 4(D).

² Article XXVIII-A of the Oklahoma Constitution refers to “wholesalers” of beer, while title 37A uses the term beer “distributor.” In this legal context, the terms are synonymous and may be used interchangeably.

When viewed together, the meaning of sections 4(B) and (D) is clear. Section 4(B) imposes restrictions on who may obtain a wine-and-spirits wholesaler license. It says nothing of any other license in the alcohol industry. Section 4(D), meanwhile, provides that the restrictions of section 4(B) “shall not apply to beer wholesalers.” But under the plain terms of section 4(B), those restrictions apply only to wine-and-spirits wholesalers—and no other purveyors of alcohol—in the first place. Given that, it is reasonable to conclude that section 4(D) applies to beer wholesalers who wish to also obtain a wine-and-spirits wholesaler license. Otherwise, the prefatory sentence of section 4(D) would serve no textual purpose. “[C]ourts avoid a reading that renders some words altogether redundant.” ANTONIN SCALIA & BRYAN A. GARNER, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 176 (2012); *see also Darnell v. Chrysler Corp.*, 1984 OK 57, ¶ 5, 687 P.2d 132, 134 (“Every provision of the Constitution . . . is presumed to have been intended for some useful purpose and every provision should be given effect.”). Under article XXVIII-A, section 4, the holder of a beer wholesaler license may also hold a wine-and-spirits wholesaler license while remaining exempt from the entity-ownership restrictions otherwise required by section 4(B).

Based on this conclusion, the 2025 legislation amending title 37A, section 2-146(B) does not violate the constitutional limitations found in article XXVIII-A, section 4. This is consistent with the rule that “[w]henever possible, statutes should be construed so as to uphold their constitutionality.” *Reherman v. Okla. Water Res. Bd.*, 1984 OK 12, ¶ 11, 679 P.2d 1296, 1300. In determining whether a legislative act is constitutional, “we do not look to the Constitution to determine whether the Legislature is authorized to do an act but rather to see whether it is prohibited.” *Id.* ¶ 12, 679 P.2d at 1300. Additionally, any “[r]estrictions and limitations upon legislative power are to be construed strictly.” *Draper v. State*, 1980 OK 117, ¶ 10, 621 P.2d 1142, 1146. Here, section 2-146’s text must be tested against the requirements of article XXVIII-A, section 4(B), which must be read together with section 4(D). As explained above, nothing in section 4(B) suggests that the restrictions therein should apply to beer wholesalers in the first instance; the provision mentions only wine-and-spirits wholesalers. Even so, the framers of this provision deliberately included language in section 4(D) that expressly cross-references the preceding restrictions in section 4(B). The only way to give effect to the key language of section 4(D) is to interpret it to mean that beer distributors who also seek a wine-and-spirits wholesaler license are not bound by the entity and residency restrictions of section 4(B). “All presumptions are to be indulged in favor of a statute’s constitutionality.” *Hill v. Am. Med. Response*, 2018 OK 57, ¶ 8, 423 P.3d 1119, 1124. Section 2-146 is consistent with, and not contrary to, the provisions of article XXVIII-A, section 4.

Other provisions within title 37A of the Oklahoma Statutes likewise lend support to this interpretation. *See Cowart v. Piper Aircraft Corp.*, 1983 OK 66, ¶ 4, 665 P.2d 315, 317 (“[S]uch provisions . . . should be construed together with other statutes on the same subject as part of a coherent system.”). From the time of its original enactment in 2016, title 37A, section 2-146(A)(15) has stated that “nothing shall prohibit a wine and spirits wholesaler, who is otherwise qualified, from maintaining beer distributor licenses in the state, nor a beer distributor, who is otherwise qualified, from maintaining a wine and spirits wholesaler license in the state.” *See* 2016 Okla. Sess. Laws ch. 366, § 58. And section 2-108—pertaining to beer distributor licenses—similarly provides that “if the beer distributor transports wine and spirits, a valid wine and spirits wholesaler license must be maintained by the beer distributor *or affiliated entity having common*

ownership with the licensed beer distributor.” 37A O.S.2021, § 2-108(A)(7) (emphasis added). With the 2025 amendment to section 2-146, the Legislature has now made clear that—in such cases of common ownership—the general restrictions on residency and entity ownership will not apply.

As explained above, Oklahoma courts “will uphold a duly enacted statute unless it is ‘clearly, palpably and plainly’ inconsistent with the Constitution.” *Inst. for Responsible Alcohol Pol’y*, 2020 OK 5, ¶ 12, 457 P.3d at 1055 (quoting *Lafalier v. Lead-Impacted Cmtys. Relocation Assistance Tr.*, 2010 OK 48, ¶ 15, 237 P.3d 181, 188). “In determining the validity of a legislative enactment, effect must be given to the intent of the Constitution’s framers and the people adopting it without regard to our own view of a provision’s propriety, wisdom, desirability, necessity, or practicality as a working proposition.”³ *Liddell v. Heavner*, 2008 OK 6, ¶ 16, 180 P.3d 1191, 1199–1200; *see also Lee v. Bueno*, 2016 OK 97, ¶ 8, 381 P.3d 736, 740 (examination of a statute “is limited to constitutional validity, not policy”). Accordingly, the Legislature’s 2025 amendment to section 2-146(B) does not violate article XXVIII-A, section 4 of the Oklahoma Constitution.

B. The ABLE Commission may not deny a license application based on the agency’s belief that the Oklahoma statute providing such requirements is unconstitutional.

Next, you ask whether the ABLE Commission may deny a license application that complies with all statutory requirements, solely based on the agency’s belief that the Oklahoma statute providing such requirements is unconstitutional. Under title 37A of the Oklahoma Statutes, the ABLE Commission has “the sole authority to issue any license” relating to the distribution of alcoholic beverages for the purpose of sale. 37A O.S.2021, § 1-107(A)(3); *see also* 2018 OK AG 6, ¶ 7 (“In general, the ABLE Commission has broad powers to regulate . . . its various licensees.”). Oklahoma law requires any prospective wholesaler licensee to satisfy numerous statutory requirements and safeguards, the failure of any of which means that the ABLE Commission “shall refuse to issue” the license. 37A O.S.2021, § 2-146(A)(1)–(17). But the ABLE Commission may only “refuse to issue any license . . . for cause.” *Id.* § 1-107(A)(4).

The ABLE Commission “is an administrative body.” OKLA. ADMIN. CODE § 45:1-3-1. “[A]s an administrative agency, it is powerless to strike down a statute for constitutional repugnancy.” *Dow Jones & Co. v. State ex rel. Okla. Tax Comm’n*, 1990 OK 6, ¶ 6, 787 P.2d 843, 845. Simply put, the “power assigned to boards and commissions is not coextensive with that which is vested in the courts.” *Id.*; *see also id.* ¶ 6 n.9, 787 P.2d at 845 n.9 (“[W]e do not commit to administrative agencies the power to determine constitutionality of legislation.” (quotation omitted)). “Every statute is . . . *presumed* constitutionally valid until a court of competent jurisdiction”—not the ABLE Commission or any other administrative body—“has declared otherwise.” *Strelecki v. Okla. Tax Comm’n*, 1993 OK 122, ¶ 11, 872 P.2d 910, 917; *see also State ex rel. York v. Turpen*, 1984 OK 26, ¶ 10, 681 P.2d 763, 767 (“The Court alone has the power to authoritatively determine the

³ If the extensive regulatory reforms ushered in by State Question 792 eventually prove unsatisfactory or grow outmoded, the voters can and will replace them. This accords with an essential guarantee of ordered democracy: the popular “right to vote upon questions of public interest and register the public will.” *In re Initiative Petition No. 348*, 1991 OK 110, ¶ 6, 820 P.2d 772, 776 (quotation and emphasis omitted); *see also Assoc. Indus. of Okla. v. Okla. Tax Comm’n*, 1936 OK 156, ¶ 8, 55 P.2d 79, 82 (“Subject to the limitations imposed by the Federal Constitution, the reserved power of the people of the state to amend their Constitution is unlimited.”).

validity or invalidity of a statute.”). As such, the ABLE Commission lacks the authority to decline to issue a license to an otherwise statutorily compliant applicant based on the Commission’s own view of the statute’s constitutionality. The ABLE Commission must apply the law as written until told otherwise by the courts.

It is, therefore, the official Opinion of the Attorney General that:

1. Article XXVIII-A, section 4 of the Oklahoma Constitution provides that the restrictions on the types of business entities that may hold a wine-and-spirits wholesaler license do not apply to beer wholesalers. This exemption for beer wholesalers includes those that also hold a wine-and-spirits wholesaler license. Accordingly, title 37A, section 2-146(B) of the Oklahoma Statutes—which provides that a wine-and-spirits wholesaler under common ownership with a beer wholesaler is not subject to the limitations on business type that would otherwise apply to the wine-and-spirits wholesaler in the absence of such common ownership—is constitutionally permissible.
2. Because the ABLE Commission lacks authority to adjudicate the constitutionality of legislation, it may not deny a license application that satisfies all applicable statutory requirements due solely to the agency’s view that certain licensing statutes violate the Oklahoma Constitution.



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