

SUPREME COURT OF LOUISIANA

No. 99-C-2215

COLE-MIERS POST 3617 V.F.W. OF DERIDDER

Versus

STATE OF LOUISIANA, DEPARTMENT OF REVENUE AND TAXATION,
OFFICE OF ALCOHOLIC BEVERAGE CONTROL

LEMMON, J., Dissenting

The majority reasons that interpreting the narrow circumstances listed in La. Rev. Stat. 26:81E as an exception to the general prohibition of the sale of alcoholic beverages in La. Rev. Stat. 26:81A and B(1) would allow a business that qualified under Subsection E to escape Section 81B's complete ban on sales prohibited by referendum vote. That is what an exception is — a case in which the general rule does not apply. While the majority states in footnote 2 that there is no exception to the ban in Subsection 81B, Subsection 81E expressly states that “[t]he prohibitions of this Section [the entire Section 81] do not apply to any premises” that fall under the two stated circumstances.¹ The language could hardly be clearer.

The majority may be correct that the Legislature did not intend to enact an exception when there was a general prohibition of sales of alcoholic beverages established by referendum. However, this court's function is to look first at what the

¹La. Rev. Stat. 26:81E excepts, from the general prohibition of La. Rev. Stat. 26:81B(1), certain premises under the following separate circumstances: (1) when the premises are maintained as a bona fide hotel or as a fraternal organization, and (2) when the premises were licensed one year or more before the prohibitory ordinance was adopted. Since the second exception refers specifically to ordinances, that second exception arguably does not apply when the prohibition is by referendum. However, the first of the two separate exceptions contains no reference to either ordinance or referendum and apparently applies no matter how the prohibition was established.

Legislature said. This court may look at legislative intent only if the language is not clear, and no ambiguous language exists in the present case.

The effect of the majority's decision is to change the word "Section" in La. Rev. Stat. 26:81E to "Subsections C and D." While the Legislature has the power to correct its prior mistaken enactment (if there was a mistake), this court does not.

I would affirm that portion of the decision of the court of appeal that holds Subsection 81E is an exception to the prohibitions in Subsections 81A and 81B(1). I would then proceed to determine whether plaintiff is a fraternal organization within the contemplation of Subsection 81E.