

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

04-78 consolidated with 04-79 & 04-80

SABINE PARISH POLICE JURY

VERSUS

COMMISSIONER OF ALCOHOL & TOBACCO CONTROL

**APPEAL FROM THE
ELEVENTH JUDICIAL DISTRICT COURT
PARISH OF SABINE, NO. 56,087 C/W 56,109 & 56,655
HONORABLE STEPHEN BRUCE BEASLEY, DISTRICT JUDGE**

**ULYSSES GENE THIBODEAUX
CHIEF JUDGE**

Court composed of Ulysses Gene Thibodeaux, C.J., Glenn B. Gremillion, and John B. Scofield*, Judges.

SCOFIELD, J., DISSENTS AND ASSIGNS WRITTEN REASONS.

AFFIRMED.

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*Honorable John B. Scofield participated in this decision by appointment of the Louisiana Supreme Court as Judge Pro Tempore.

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THIBODEAUX, Chief Judge.

The dispute in these three consolidated cases involves whether a certain portion of Sabine Parish can sell alcoholic beverages. The Sabine Parish Police Jury (Police Jury) appeals the judgment of the trial court finding that Ward 3 of Sabine Parish, was merged with Election District 6 of Sabine Parish when election districts were created in that parish, resulting in Ward 3's prohibition of the sale of alcohol to be without effect. For the following reasons, we affirm the judgment of the trial court.

I.

ISSUE

The issue in this case is whether, pursuant to La.R.S. 26:583, Ward 3 of Sabine Parish, which prohibits the sale of alcoholic beverages, has been merged into Election District 6, which does not prohibit such sales, when Sabine Parish was divided into election districts encompassing parts of both Wards 3 and 5.

II.

FACTS

In March 1977, a local option election was held in Ward 3 of Sabine Parish. The citizens of Ward 3 voted to forbid the sale of alcoholic beverages in the ward. In the 1980s, Sabine Parish was divided into election districts. The impetus for the creation of election districts based on population in the 1980s appears to have been the parish's desire to comply with the federal mandate of "one man-one vote." See *King v. Caddo Parish Comm'n*, 31,098, p. 5 (La.App. 2 Cir. 12/22/98), 727 So.2d 545, 548, and *Stephens v. Madison Parish Police Jury*, 463 So.2d 609 (La.App. 2 Cir. 1984). When Election District 6 was created, part of Ward 3 and all of Ward 5 were

included. Ward 5 had not held a local option election; thus, the sale of alcoholic beverages was not prohibited in that ward.

On January 15, 2003, the Police Jury passed a resolution opposing the issuance of alcoholic beverage licenses in Ward 3. Thereafter, on January 23, 2003, Sabine Manufacturing, Inc. (Sabine Mfg.), which operates Toledo Town and Tackle (Town & Tackle) in Ward 3, applied to the State of Louisiana, Department of Alcohol and Tobacco Control, for a permit to sell beverages of high and low alcohol content at Town & Tackle. The State granted the license to Sabine Mfg. However, the Sheriff of Sabine Parish, Guffey Pattison, refused to issue a local license and Sabine Mfg. filed suit to obtain the local license.

In June 2003, Sabine Mfg. applied for both a state and local license to sell high and low alcoholic content beverages at Mr. C's Café, a restaurant Sabine Mfg. operates which is located also within the boundaries of Ward 3. Again, the state license was granted, but the Police Jury refused to issue a local license. Sabine Mfg. filed suit again. Thereafter, the Police Jury filed suit against the Commissioner of Alcohol and Tobacco Control and Sabine Mfg. to have the Commissioner's decision to grant liquor licenses to Sabine Mfg. reviewed. The Police Jury asserted that the state was prohibited from issuing a liquor license to Sabine Mfg. because Ward 3's previous local option election resulted in a prohibition against the sale of alcoholic beverages within its boundaries.

The three cases were consolidated for trial. At the conclusion of trial, the trial court rendered a judgment in favor of the Commissioner and Sabine Mfg. and ordered the Police Jury and Sheriff Pattison to issue local liquor licenses to Sabine Mfg. It is from this judgment that the Police Jury and Sheriff Pattison appeal.

III.

LAW AND DISCUSSION

The Police Jury and Sheriff Pattison contend that the sale of liquor remains prohibited in Ward 3 because it still retains some functions as a separate ward, *e.g.*, its road district, tax collecting and spending powers, fire protection and stock laws, and has not been totally abolished as a ward for these purposes. They argue that becoming a part of Election District 6 did not change the “dry” status of Ward 3. To the contrary, Sabine Mfg. and the Commissioner urge that once Ward 3 became part of Election District 6, a district that allows the sale of alcohol, its status as a “dry” ward was negated pursuant to La.R.S. 26:583.

Title 26 is the Alcoholic Beverage Control Law and its provisions regulate, among other aspects of controlling the sale of alcoholic beverages, local option elections. An election district is defined in La.R.S. 26:581(2) as a “district from which a parochial officer is elected but ‘election district’ does not include a district located entirely within an incorporated municipality.” The election code defines “ward” as “a police jury ward in a parish and in parishes having no police jury wards means the subdivision of the parish equivalent to a police jury ward.” La.R.S. 18:2(11).

In *King*, the case cited by the trial court in its judgment in this case, a portion of a previously established “dry” ward was encompassed within a later created election district. The issue in *King* was whether the portion of the ward that was within the new election district retained its “dry” status. The issue is the same in the present case. Ultimately, the court in *King* concluded that the ward did not retain its “dry” status once it became part of the election district.

At first glance, and in accordance with the appellants’ arguments, it appears that the *King* decision is justified because throughout the opinion it referred

to the ward as the “old ward three.” Appellants assert that the court’s reference to the ward as the “old” ward indicates that the ward was abolished; thus, central to the *King* decision is the fact that the ward did not exist for any purpose once it was made part of the election district or, in other words, it was totally abolished. They argue that the ward at issue in the present case still exists for limited purposes and has not been declared abolished, unlike the ward in *King* which ceased to exist for all purposes. *King*, therefore, does not support the trial court’s judgment. We disagree with the appellants’ position.

Our reading of *King* is that the court’s reference to the “old” ward three did not clearly imply that it was a thing of the past. Instead the use of the word “old” when discussing ward three appears to be nothing more than a way of distinguishing it from the newly formed election district. In *King*, the court cited with favor the second circuit case of *Stephens*, 463 So.2d 609. In *Stephens*, the court specifically concluded that the ward was abolished. However, on rehearing, the court noted that an old ward may continue to have some political function after restructuring, but reinstated the original opinion that a local option election in the old ward was negated. Consequently, it appears that neither *King* nor *Stephens* relied heavily on the abolishment of the respective wards for all purposes to conclude that they became a part of the new election district and were no longer “dry.” It does appear that both cases focused on whether the wards were used for election purposes. In *Stephens*, the court noted that the “police jurors were elected from the newly created wards.” *Stephens*, 463 So.2d at 611. Likewise, in *King*, the court noted:

With *election district* being defined and both terms [*ward* and *election district*] being continued in the local option law, the controlling term in this appeal from *Caddo* Parish [as restructured] is *election district*, while in the case of a parish that continues to elect its governing body from *wards* [even though restructured], the controlling term *in the local option law* would be *ward*. . . . [T]he entity that

chooses a member of the parish governing body that is made a part of another *ward* or *election district* “shall take on the [wet or dry] characteristics . . . of [either] the ward [or] election district [as the case may be] . . . to which it is . . . made a part of. . . . [T]he statute . . . corroborates this conclusion by continuing to declare its intent “that the sale of [alcoholic] beverages covered by this Title [the local option law] be permitted or prohibited in an *entire ward* [or] *election district*. . . .” § 583.

King, 727 So.2d at 549 (emphasis in original).

In the present case, the officials of the parish governing body, police jurors, are elected from election districts and not from wards. Thus, Election District 6 is the “parish governing authority,” as stated in La.R.S. 26:583. Although there was a local option election prior to Ward 3 being made a part of Election District 6, there was no such election in Election District 6. As stated in *King*, a “newly created *ward*, or *election district*, respectively, as the case may be, is ‘wet’ until a local option election produces a dry vote and resulting ordinance in the respective entity.” *King*, 727 So.2d at 549. We find that Ward 3 was made a part of Election District 6, from which the Parish’s governing body is elected.

Despite Ward 3's continued existence for other purposes, it does not exist for the purpose of electing the parish’s governing body. *King* and *Stephens* teach that it is not the abolishment of a particular ward for all purposes that is of importance in determining the wet or dry status of a previously “dry” political subdivision that is made part of a “wet” political subdivision. The central issue is whether the governing body of the parish is elected from the old political subdivision, that is “dry,” or the new political subdivision, that is “wet.” Since there has been no local option election in Election District 6 resulting in the prohibition of the sale of alcohol and police jurors in Sabine Parish are elected from Election Districts, Ward 3 takes on the characteristics of Election District 6 and is, therefore, “wet.”

IV.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. Costs of this appeal, in the amount of \$1,394.28, are assessed equally against the appellants, Sabine Parish Police Jury and Sheriff Guffey Pattison.

AFFIRMED.