



HENRY MCMASTER
ATTORNEY GENERAL

March 9, 2009

Via: U.S. Mail and Facsimile - (803) 267-7700

James A. Preacher, Jr., Chief of Police
Ehrhardt Police Department
P. O. Box 185
Ehrhardt, South Carolina 29081

Dear Chief Preacher:

In a letter to this office you questioned whether an individual can be charged with the offense of open container, a violation of S.C. Code Ann. § 61-4-110, where he is parked in a parking lot that is not posted as being under police jurisdiction. Section 61-4-110 states that

[i]t is unlawful for a person to have in his possession, except in the trunk or luggage compartment, beer or wine in an open container in a motor vehicle of any kind while located upon the public highways or highway rights of way of this State.... (emphasis added).

S.C. Code Ann. § 23-1-15 states that

[a]ny real property which is used as a parking lot and is open to use by the public for motor vehicle traffic shall be within the police jurisdiction with regard to the unlawful operation of motor vehicles in such parking lot. Such parking lots shall be posted with appropriate signs to inform the public that the area is subject to police jurisdiction with regard to unlawful operation of motor vehicles...In any such area the law enforcement agency concerned shall have the authority to enforce all laws or ordinances relating to the unlawful operation of motor vehicles which such agency has with regard to public streets and highways immediately adjoining or connecting to the parking area. (emphasis added).

In the opinion of this office, inasmuch as Section 61-4-110 is restricted to the possession of beer or wine "while located upon the public highways or highway rights of way of this State" and Section 23-1-15 requires posting of a parking lot in order to "enforce all laws or ordinances relating to the unlawful operation of motor vehicles which such agency has with regard to public streets and

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highways immediately adjoining or connecting to the parking lot", an individual could not be charged with an open container violation under Section 61-4-110 if he is found parked in a parking lot that is not posted pursuant to Section 23-1-15.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General