

7207 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

July 27, 2001

The Honorable David Thomas
Senator, District No. 8
23 Wade Hampton Boulevard
Greenville, South Carolina 29609

Dear Senator Thomas:

By your letter of July 6, 2001, you have requested an opinion of this Office concerning the Local Hospitality Tax Act. You write:

There are a number of local governing bodies that have instituted the Local Hospitality Tax. Many of these bodies are charging the hospitality tax on goods prepared in grocery stores, such as breads, pies, and the like.

The South Carolina Code specifically provides for a Local Hospitality Tax as (6-1-710) "a tax on the sale of prepared meals and beverages..." Please provide for me an opinion as to whether the statute applies to the food items I have mentioned above.

As you have noted, the Local Hospitality Tax Act ("Act"), codified at South Carolina Code of Laws Section 6-1-700 *et seq.*, defines a local hospitality tax as "a tax on the sales of prepared meals and beverages sold in establishments or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine." S.C. CODE ANN. § 6-1-710 (emphasis added). Unfortunately, little more is offered in the Act's definitions to provide guidance on the types of foods, meals or establishments contemplated. Furthermore, the courts of South Carolina have not yet clarified the Act's application to grocery store items.

In the absence of statutory guidelines or case law, basic rules of statutory construction must be employed. In interpreting any statute, the fundamental tenet which must be followed is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction that is consistent with the purpose and policy expressed therein. Jones v. S.C. Highway Dept., 247 S.C. 132, 146 S.E.2d 166 (1966). Words used in an enactment should be given their plain and ordinary meaning. Smith v. Eagle Const. Co., 282 S.C. 140, 318 S.E.2d 8 (1984).

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In our opinion, a plain and ordinary reading of the terms "prepared meals" would not apply to foods such as pies and breads sold in a grocery store. The term "meal" in particular connotes a more diverse combination of foods. For example, ENCARTA WORLD ENGLISH DICTIONARY defines "meal" as "food eaten at one time: a substantial amount of food, often more than one course, that is provided and eaten at one time." By contrast, an item such as bread or pie typically serves only as one component of a meal. Construing "prepared meals" to apply to all components of meals such as breads and pies would lead to an absurd result, as most food items sold in a grocery store could be used as components of a meal. Furthermore, had the General Assembly intended to include these kinds of items, it could have used the more likely choice of words "prepared *food* and beverages" in the definition of the tax. We think a practical reading of Section 6-1-710 requires our conclusion that foods such as breads and pies, which typically serve as only components of a meal, are not contemplated by the Act.

Please be advised that this is an unsettled area of law in South Carolina. Because your question has not been addressed by the courts and the Act is unclear on this point, I am unable to advise you with absolute certainty that a court would not rule that the Act applies to items such as breads and pies under certain circumstances. However, you may wish to consult with the Department of Revenue regarding this issue. That agency is in a better position to interpret the Act and may have knowledge as to how other municipalities are proceeding under the Act. Finally, a party subject to the ordinance may wish to seek a declaratory judgment for clarification of this point.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General