

The State of South Carolina



Office of the Attorney General

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November 3, 1987

Wendell O. Brown, Esquire
Kingstree Town Attorney
Post Office Box 708
Kingstree, South Carolina 29556

Dear Mr. Brown:

You have advised that an individual has applied to the Town of Kingstree for a business license to conduct business as a "spiritual adviser." You have asked whether the Town of Kingstree may refuse to issue the business license or may prohibit this type of activity altogether. You have advised that you cannot locate a statute of the State of South Carolina which would prohibit such activity; we concur with your research but would mention the following sections of the Code of Laws of South Carolina (1976) which could be applicable if the facts of a given situation so warranted: Sections 40-41-310, 1/ 16-17-690, and 16-13-240.

You had attached to your letter a one-page advertisement of the applicant, "Madame Ruby," and have described the process by which a customer is interviewed, for compensation, to determine whether the customer has a problem which the spiritual adviser can treat. If so, the customer would then pay an additional amount to have the spiritual adviser continue working with him. The spiritual adviser does not appear, from your description, to be holding herself out to the public as practicing a learned profession which would require licensure by one of the State's licensing boards. The activity which you have described most closely resembles clairvoyancy, astrology, or fortune-telling.

In general, courts have upheld laws or regulations which regulate the practice of astrology, clairvoyancy, fortune-telling, and similar spiritual guidance. For example, see In

1/ This statute is still codified though it has been declared unconstitutional in its entirety in Daniel v. Cruz, 268 S.C. 11, 231 S.E. 2d 293 (1977).

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Re Bartha, 63 Cal. App. 3d 584, 134 Cal. Rptr. 39, 91 A.L.R. 3d 759 (1976), a copy of which is enclosed with Annot., 91 A.L.R. 3d 766, "Regulation of Clairvoyancy and Astrology." You will see from the cases annotated therein that such regulation has been upheld against challenges of due process, equal protection, privileges and immunities, freedom of religion, freedom of speech, and other constitutional grounds. In 6 McQuillin, Municipal Corporations, §24.216 (enclosed), the regulation of fortune-telling, palmistry, and the like by municipalities is specifically addressed. Though this Office has not examined it, we understand that the City of Columbia has adopted such an ordinance; city officials could most probably give you further information about their ordinance.

As noted in your letter, the individual's application for a business license was pending and has not yet (as of the date of your letter) been granted. Merely applying for a license does not vest one with property rights. Matter of Hidden Springs Trout Ranch, Inc., 102 Idaho 623, 636 P.2d 745 (1981); Schubiner v. West Bloomfield Township, 133 Mich. App. 490, 351 N.W. 2d 214 (1984); see also Dantzler v. Callison, 230 S.C. 75, 94 S.E.2d 177 (1956) (no vested right to continue, once licensed, in a business or trade subject to regulation under police power of the State, as such regulations or laws may be changed). Thus, the fact that the activity contemplated by the business license applicant becomes regulated before the application is acted upon should not run afoul of any vested rights.

We trust that the foregoing, with the noted enclosures, will respond satisfactorily to your inquiry. Please advise if we may provide clarification or additional assistance.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

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Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions