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The State of South Carolina



Office of the Attorney General

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July 13, 1987

The Honorable Frank Powell
Richland County Sheriff
P. O. Box 143
Columbia, SC 29201

RE: §§16-17-490, 61-9-40, and 61-9-61
#OS-2764

Dear Sheriff Powell:

Attorney General Medlock has referred your letter of May 1 regarding the above statutes to me for inquiry and reply.

Your question concerns §16-17-490, Contributing to the Delinquency of a Minor, and whether or not it should be regarded as unconstitutional or repealed by implication by the Legislature's enactment of §61-9-40, Sale of Certain Alcoholic Beverages to Persons Under Age, and §61-9-61, Transfer or Gift of Beer or Wine to a Minor. Both of the latter two statutes have been enacted after §16-17-490.

Contributing to the Delinquency of a Minor would appear on its face to be a rather broad statute, prohibiting as many as ten different types of conduct directed toward a minor, including the following which are relevant to your inquiry:

- (1) To violate any law or municipal ordinance.
- (2) To become and be incorrigible or ungovernable or habitually disobedient and beyond the control of his or her parent, guardian, custodian or other lawful authority . . .
- (5) To engage in any occupation which is in violation of law . . .
- (7) To frequent any place the existence of which is in violation of law . . .
- (10) To so deport himself or herself as to wilfully injure or endanger his or her morals or health or the morals or health of others.

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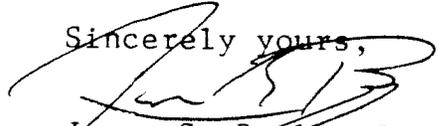
The above section was enacted in 1957, and has been amended at least twice. With the increasing problem of abuse of alcoholic beverages by minors, and a general move nationwide to increase the drinking age, other legislation was subsequently enacted. For example, §61-9-40, making it illegal to sell beer, ale, wine or similar beverages to persons under a designated age, was amended to raise that age from 18 to 21, effective September 14, 1986. Similarly, §61-9-61, making it unlawful to give beer or wine to a person under age 18, was amended in 1986 to raise that threshold age to 21 years, effective September 14, 1986.

While §16-17-490 does not contain specific language addressing beer, wine, or other alcoholic beverages, the portions quoted above would appear to address that type of conduct which could involve the use of such beverages, and certainly that section has and will be used by law enforcement agencies to enforce the law regarding the giving of alcoholic beverages to minors, or beer use by minors. However, for a statute to be declared unconstitutional or considered to have been repealed by implication, there would have to be some direct conflict between the older statute and the new one, an act or decision by an appellate court of competent jurisdiction, or a specific provision in the new statute repealing the old one. The repeal of a statute by implication is generally not favored by the Courts, and requires a clear conflict, or specific language as discussed above. That does not appear to be present when comparing the Contributing statute to the two newer statutes relating to sale or transfer of beer or wine to minors.

Accordingly, I would advise that the three statutes referenced in your letter still stand, and offer law enforcement and prosecutors certain discretion as to the type of charges to bring against an individual found to be in violation of them. As you noted, contributing carries a penalty of up to \$3,000, three years, or both, while §61-9-61 is a magistrate offense and §61-9-40 carries \$100 to \$200, 30 to 60 days, or both, in the discretion of the Court.

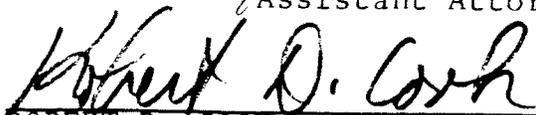
I apologize for being late in getting this letter to you. If further information is desired, please do not hesitate to contact me.

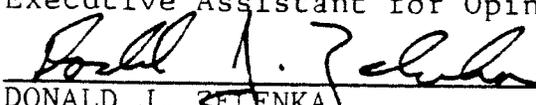
Sincerely yours,


James G. Bogle, Jr.
Assistant Attorney General

JGBjr/add

APPROVED BY:


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Executive Assistant for Opinions


DONALD J. ZELINKA
Chief Deputy Attorney General