

1984 S.C. Op. Atty. Gen. 336 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-140, 1984 WL 159946

Office of the Attorney General

State of South Carolina
Opinion No. 84-140
December 21, 1984

*1 Ms. Debbie Owens
City Staff Attorney
City of Florence
City-County Complex
Drawer AA
Florence, South Carolina 29501

Dear Ms. Owens:

Your letter and memorandum of November 16, 1984 have been referred to me for a response. You may recall, you inquired whether the City of Florence may require bingo operations to obtain business licenses under the City's business license ordinance.

For your convenience, I have enclosed a copy of a recent opinion of the South Carolina Supreme Court which holds that cities, counties and other local government entities may regulate bingo games conducted within their jurisdiction. Amvets Post 100 vs. Richland County Sheriff, et al., Opinion 22049, Filed 2/28/84. In the Amvets case, the Supreme Court upheld a Richland County ordinance which imposed regulations upon bingo operations which were not included in the State-wide laws which regulate bingo games.

In response to your specific question of whether the City of Florence can require a bingo operation to obtain a business license, it is the opinion of this Office that the City of Florence can require any bingo operation within the City to obtain a business license. The requirement that the bingo operations obtain a business license plainly does not conflict with State laws which regulate bingo, and the Supreme Court has held that the State-wide legislation on bingo does not preempt the field of regulation of bingo. See Amvets Post 100 vs. Powell, supra. For your convenience, I have enclosed a copy of the Richland County ordinance upheld in Amvets Post 100 vs. Powell.

You also inquired whether the City could require any bingo operation seeking an exemption from the license requirement to demonstrate that the entire proceeds are devoted to charity. Based upon my review of the relevant authority, I am of the opinion that the City may, under the provisions of the ordinance, require any business which claims to be exempt to establish to the satisfaction of the City that the business is entitled to the exemption.

As I understand your city ordinance, any business must obtain a business license in order to conduct business within the city. The city ordinance then defines 'business' as follows:

Section 2(a). 'Business' means a calling, occupation, profession or activity engaged in with the object of gain, benefit or advantage, either directly or indirectly. A charitable organization shall be deemed a business unless the entire proceeds of its operation are devoted to charitable purposes. (emphasis added).

It first may be noted that any applicant for a business license must show compliance with all prerequisites and conditions under the ordinance. McQuillin, Vol. 3, § 26.73, p. 163. The general rule is that exemptions from licensing ordinances will not be implied or presumed and must be construed, according to the decisions, strictly against the exemption. 53 C.J.S. Licenses, § 31(b), at pp. 603-604. In the area of taxation, the burden of establishing entitlement to an exemption is on the person who

claims it, and the person must bring himself clearly within the exemption. 53 C.J.S. Licenses, § 31(b) at 606. In the area of taxation by municipal corporations, it has been noted: 'One claiming the exemption has the burden of clearly establishing his asserted right thereto.' McQuillin, Municipal Corporations, 3rd Ed., Vol. 16, § 44.67, p. 214. Our Supreme Court has held:

*2 Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of the taxpayer claiming the exemptions. He must clearly bring himself within the constitutional and statutory language upon which he relies. Textile Hall Corp. v. Hill, 215 S.C. 262 (1949).

It has also been stated that exemptions from municipal licensing requirements are subject to reasonable rules of construction and interpretation and doubts as to exemptions are resolved against the exemption. McQuillin, Municipal Corporation, 3rd Ed., Volume 9, § 26.47a, p. 101.

For purposes of this opinion, it is assumed that the licensing ordinance is intended mainly as a regulatory measure, although its incidental effect is to produce revenue. That being the case, the rule of interpretation to be used is that the courts will be concerned principally to effect the regulatory objectives of the ordinance. As has been stated:

It has been recognized that there is reason to follow a policy of reasonable construction with respect to statutes that require licenses and which are intended to regulate business and other activities in the interests of economic welfare, health and safety. Although earlier policy was that licenses statutes were to be strictly construed, since licensing constitutes a severe interference with business, the modern trend appears to favor a more liberal construction in the interests of carrying out the intended objectives of such laws. 4th ed., Sands, Sutherland on Construction, 'Revenue Legislation' § 66.10, p. 211.

The purpose of the ordinance in question appears to be to require all businesses to obtain a business license unless the business is a charitable organization which devotes its entire proceeds to charitable purposes. In order to effect the purposes of the ordinance, I am of the opinion that, based upon the above authorities, the City of Florence may require any business claiming exemption to satisfactorily demonstrate that it qualifies for the exemption.

I trust this answers your questions. If you need any further information, do not hesitate to contact me.

Very truly yours,

William K. Moore
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