

1981 WL 158153 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 18, 1981

*1 The Honorable Ramon Schwartz, Jr.
Speaker of the House
P.O. Box 11867
Columbia, S.C. 29211

Dear Mr. Speaker:

In a letter to this office you raised the following questions concerning the applicability of this State's 'blue laws':

1. Does the current law permit a manufacturing process to be operated for seven days a week in an effort to meet product demands and maximize the return on investments?
2. If the answer to question #1 is in the negative, would such a statute as would permit such seven day a week operations under the circumstances outlined be constitutional?

Several manufacturing operations are currently exempted from the provisions of Chapter 1 of Title 53 of the 1976 Code of Laws. Such chapter generally prohibits certain activities on Sundays in this State. Included in such chapter is Section 53-1-40 which states that it is unlawful to engage in worldly work, labor, or business of one's ordinary calling or to employ others to do such, excepting work of necessity or charity.

Operations specifically exempted from the prohibitions of Chapter 1 of Title 53 are the operation of machine shops (Section 53-1-100); the manufacture and finishing of textile products (Section 53-1-110); and the operation of manufacturing establishment whose '... business involve manufacturing processes requiring, of necessity, for a normal production schedule continuous and uninterrupted operation' (Section 53-1-130). Based upon a review of such sections, it appears that for the manufacturing process which you referenced to be exempt from the 'blue laws', it must be determined that the process come within the language of Section 53-1-130.

In [Mullis v. Celanese Corporation of America](#), 234 S.C. 380, 108 S.E.2d 547 (1959), the South Carolina Supreme Court in construing an almost identical statute, former Section 64-6 of the 1952 Code of Laws, which specifically referenced 'chemical' manufacturing processes, held that the particular manufacturer was within the statutory exemption. The manufacturer in Mullis was engaged in producing a product which the Court construed as requiring continuous and uninterrupted production because of the particular manufacturing process. Based upon a review of the history of Act No. 923 of 1950, which was later codified as Section 64-6, the Court determined that the Legislature was particularly concerned with the unique manufacturing requirements of the process referenced in [Mullis](#) in enacting the provision codified as Section 64-6. Referencing the basis for the decision in [Mullis](#), and particularly the attention given to the manufacturing technique involved, in the opinion of this Office, the manufacturing process referenced in your question, which seeks to operate for seven days a week 'to meet product demands and maximize the return on investments' would not come within the provisions of Section 53-1-130 and thus be exempt from this State's 'blue laws'

*2 As to your second question concerning whether a statute enacted to permit a seven day operation for such a particular manufacturing process would be constitutional, it is likewise questionable whether such a statute could avoid being determined to be arbitrary or based upon an unreasonable classification. The South Carolina Supreme Court in [Gasque, Inc. v. Nates, Commissioner](#), 191 S.C. 271, 2 S.E.2d 36 (1938) stated:

‘(i)t is true that the Legislature has the power in passing a law to make a classification of its citizens and the constitutional provisions are not violated by such classification if the law as passed is applicable alike to all persons belonging to the given class, but the Courts of the State and of the United States have always held that such classification cannot be made arbitrarily, but must rest upon some difference which bears a reasonable and just relation to the Act in which the classification was proposed.’
[191 S.C. 271 at 282.](#)

Furthermore, in Mullis, supra., the Court recognized that the General Assembly could classify certain occupations or businesses for inclusion or exemption from Sunday closing laws and such classification, if based upon ‘substantial differences rationally justifying the diversity’ ([234 S.C. 380 at 392](#)), would not violate the equal protection clauses nor render such to be special legislation repugnant to Article III, Section 34, subdivision IX of the State Constitution which forbids the enactment of special laws if a general law could be made applicable.

It appears that a strong argument could be made that a statute which permits a manufacturing process to operate seven days a week only for the purpose of meeting product demands and maximizing an investment return is arbitrary and not based upon a distinction sufficiently substantial to justify the diversity. Therefore, in the opinion of this Office, it is questionable whether such a statute would be constitutional.

With best wishes.
Very truly yours,

Daniel R. McLeod
Attorney General

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