

1981 WL 157886 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 29, 1981

*1 The Honorable Richard W. Riley
Governor of South Carolina
State House
Columbia, South Carolina 29201

Dear Governor Riley:

You have requested the opinion of this Office as to the constitutionality of § 14, Part II of the 1981-82 General Appropriations Act (House Bill 2461 as amended and ratified by the General Assembly). That Section, containing permanent provisions, would amend Chapters 7 and 9 of Title 61 of the South Carolina Code of Laws so as to regulate the processing and delivery of orders for alcoholic liquors, beer and wine destined for military establishments located in this State.

Unquestionably, this proposed statutory scheme gives rise to difficult and substantial issues of constitutional import in the area of appropriate state and federal relations and authority. The differing views held within this Office only foreshadow the legal challenges that may await the courts. Yet, as more fully discussed by separate memorandum, and close and thorough review of the decisions of the United States Supreme Court in related cases makes it clear that the issues now presented have not been so authoritatively decided as to be beyond dispute.

It is a well recognized rule of statutory construction that legislative enactments are presumed to be constitutional, and that 'a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provisions of the Constitution.' [Moseley v. Welch](#), 209 S.C. 19, 26-27, 39 S.E.2d 133, 137 (1946). While the legislation sent to you for consideration does not yet have the force and effect of law, it is clearly the Act of the Legislature. It embodies the collective and deliberate judgment of uniquely representative individuals of diverse interests and backgrounds given upon their solemn oath to 'Preserve, protect and defend and Constitution of this State and of the United States'.

Although no legal authority can be found, common sense, logic and reason mandate that this same presumption of constitutionality apply when a duly enacted Act or Joint Resolution is presented to the Governor for his consideration. Were the rationale for such presumption not then existing, it would be difficult to explain from whence it arises in those situations where an Act becomes law upon gubernatorial inaction.

Given the presumption of constitutionality which is now deemed to exist and the failure of the United States Supreme Court to decide the precise parameters of legitimate state authority in this area of the law this Office is unable to conclude that South Carolina's proposed regulatory scheme is clearly unconstitutional.

Yours very truly,

John P. Wilson
Senior Assistant Attorney General

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