

1982 WL 189461 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 13, 1982

*1 The Honorable Richard W. Riley
Governor
State of South Carolina
Post Office Box 11450
Columbia, South Carolina 29211

Dear Governor Riley:

Attorney General McLeod has referred John Stephen Hooks' letter of October 8, 1982, to me for reply. As I understand it, the first question posed in that letter is whether the sale on Sunday of certain items is prohibited by South Carolina Code of Laws, Sections 53-1-40 and 53-1-60, if 50 percent of the profit from these sales is given to charity and 50 percent is retained by the merchants making the sales.

Section 53-1-40 provides in part:

On the first day of the week, commonly called Sunday, it shall be unlawful for any person to engage in worldly work, labor, business of his ordinary calling or the selling or offering to sell, publicly or privately or by telephone, at retail or at wholesale to the consumer any goods, wares or merchandise or to employ others to engage in work, labor, business or selling or offering to sell any goods, wares or merchandise, excepting work of necessity or charity. [Emphasis added]

Therefore, any sales or work which can be classified as 'of charity' would be allowed on Sunday. This would include sales of those items listed in Section 53-1-60, if those sales are for charity. However, in the situation described in Mr. Hooks' letter, only a portion of these sales inures to the benefit of charity, and thus these sales could not be classified as 'of charity' so as to fit under the exception provided in Section 53-1-40. The primary reasons for this are that there is no practical way of enforcing the 50 percent charitable division of profits and this arrangement would allow for certain sales clearly in violation of Section 53-1-40 (the 50 percent of the profits retained by the merchants). Further, there is no logical way to apply such a division of the profits to the statutory prohibition. In other words, if such a division of profits were to be allowed, then it could lead to allowing sales on Sunday when only one percent of the profit went to charity, clearly violating the spirit and the letter of the law.

However, the second question in Mr. Hooks' letter asks whether such sales would be allowed on Sunday if the contract between the merchants and the charity provides that 100 percent of the profit from Sunday sales is devoted to the charity, and some other percentage of the profits from sales during the week is devoted to the charity. This would be permissible since all of the sales on Sunday are for charity and would fit under the statutory exception provided in Section 53-1-40. Although this would appear to be doing indirectly what cannot be done directly, there is no statutory prohibition for such an arrangement.

I hope this letter is of assistance to you, and if you have any other questions, please do not hesitate to contact me.

With best personal regards, I am
Yours very truly,

John M. Barton
*2 Assistant Attorney General

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