

1977 S.C. Op. Atty. Gen. 56 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-54, 1977 WL 24396

Office of the Attorney General

State of South Carolina

Opinion No. 77-54

February 11, 1977

\*1 TO: Honorable James R. Metts

Sheriff

Lexington County

QUESTION PRESENTED:

Whether Section 64–2.1 of the CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, prohibits the operation on Sunday of a grocery store that engages the services of more than three persons, including the owner or proprietor at any one time, even though the services of those persons are rendered gratuitously.

AUTHORITY:

Section 64–2, 64–2.1, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended.

83 C.J.S. Sunday § 5.

14 WORDS AND PHRASES, Employ.

DISCUSSION:

Section 64–2 of the CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, prohibits all worldly work, labor and business on Sunday:

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 . . . any goods, . . . or to employ others to engage in work, . . . excepting work of necessity or charity.

One of the exceptions to this prohibition is found in Section 64–2.1 which states:

Section 64–2 shall not apply to the following: . . . the sale of emergency food needs at open air markets and grocery stores which do not employ more than three persons including the owners or proprietors at any one time; . . .

For the purposes of a Sunday closing law such as that found in Section 64–2, the general law is that ‘the element of compensation is immaterial in determining whether a particular activity is or is not within a prohibition of labor.’ 83 C.J.S. Sunday § 5. Thus, an activity may be work or labor within the meaning of Section 64–2 even though it is uncompensated and rendered voluntarily and gratuitously.

The above cited portion of Section 64–2.1 only permits the sale of emergency food needs on Sunday at grocery stores ‘which do not employ more than three persons.’ The word ‘employ’ as it is used in both Section 64–2 and Section 64–2.1 is not used synonymously with the word ‘hire,’ which carries compensation connotations, but carries a much larger connotation. For

example, a person hired to labor is considered employed, but a person may be employed to work without being hired since the term 'employ' means to 'use as a servant, agent or representative,' 'to make use of the time, attention or labor of,' and does not require the payment of compensation. 14 WORDS AND PHRASES, Employ. Thus, a person may be employed by another even though the services are rendered without compensation.

A grocery store operating on Sunday and using or employing more than three persons at any one time to render services to the store's customers, regardless of whether or not any or all of the persons are compensated, would be operating outside the scope of Section 64-2.1 and in violation of Section 64-2, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended.

M. Elizabeth Crum  
Assistant Attorney General

1977 S.C. Op. Atty. Gen. 56 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-54, 1977 WL 24396

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.