

1977 S.C. Op. Atty. Gen. 114 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-136, 1977 WL 24478

Office of the Attorney General

State of South Carolina

Opinion No. 77-136

MAY 4, 1977

\*1 Section 4–21 of the Code of Laws of South Carolina, 1962, as amended, prohibits the employment by the Commission of an agent whose brother holds a sale and consumption license.

TO: Honorable Kenneth E. Allen  
Commissioner

#### QUESTION PRESENTED

Would Section 4–21 of the South Carolina Code of Laws prohibit this Commission from employing an agent whose brother holds a sale and consumption license issued by this Commission?

#### STATUTES, CASES, ETC.

Sections 4–21, 22, 29 *et seq.*, Code of Laws of South Carolina, 1962, as amended;

[Feldman v. S. C. Tax Commission](#), 203 S.C. 49, 26 S.E.2d 22.

#### DISCUSSION

Section 4–21, Code of Laws of South Carolina, as amended provides *inter alia* that:

No member, officer or agent of the Tax Commission, or the South Carolina Alcoholic Beverage Control Commission, directly or indirectly, . . . (d) as a relative to any person by blood or marriage within the second degree shall: (1) have any interest whatsoever in the manufacture of or dealing in alcoholic liquors or in any enterprise or industry in which alcoholic liquors are required; . . . (Emphasis added).

The prime objective in construction of a statute is to ascertain and give effect to the legislative intent. [Feldman v. S. C. Tax Commission](#), 203 S.C. 49, 26 S.E.2d 22. The Alcoholic Beverage Control Commission is a regulatory body empowered with the responsibility of regulating the alcoholic beverage industry in South Carolina. The above quoted statute when read as a whole evinces a legislative purpose to prohibit certain designated persons from maintaining an interest which poses a potential conflict to their position with the Commission. The legislature has attempted to insure that there will not be a conflict of interest between the regulators and those being regulated. Therefore, any construction of the provisions of § 4–21 should effectuate legislative intent.

An ‘agent’ of the Commission is included within the designated categories of persons of the statute. The term ‘agents’ commonly connotes Alcoholic Beverage Control investigators. These individuals are commissioned by the Governor and authorized to enforce the provisions of laws dealing with the regulation of alcoholic beverages and beer and wine. Section 4–22, Code of Laws of South Carolina, 1962, as amended. In addition, § 4–22 uses the term ‘agent’ synonymous with the term ‘inspector’. The inspectors or agents of the Commission play a critical role in the regulation of alcoholic beverages in South Carolina, and as such, it is reasonable to conclude that such individuals were intended to be included within the prohibitions of § 4–21.

The Alcoholic Beverage Control Commission issues and regulates sale and consumption licenses. See § 4–29 et seq., Code of Laws of South Carolina, 1962 as amended. The holding of such a license would clearly constitute an interest in alcohol liquors as categorized in subsection (1) of § 4–21.

\*2 The legislature has prohibited an agent of the Alcoholic Beverage Control Commission from maintaining an interest in a regulated business. An agent is construed as having an interest if the agent is a relative to any person by blood or marriage within the second degree who has an interest. A brother is recognized in South Carolina as being within the second degree of kinship. See § 19–52 of the 1962 Code. Consequently, if the brother of an agent maintains an interest in the manufacture or dealing of alcoholic liquors, such as the holding of a sale and consumption license, the employment of the related agent would be prohibited.

#### CONCLUSION

Section 4–21 of the South Carolina Code would prohibit the Commission from employing an ‘agent’ whose brother holds a license for the sale and consumption of alcoholic beverages issued by the Commission.

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