

1976 WL 30590 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 9, 1976

\*1 If the Alcoholic Beverage Control Commission imposes a fine pursuant to Section 4-29.10(1), the fine shall be no less than \$200.00 nor no more than \$500.00.

Honorable Kenneth E. Allen  
Director  
Alcoholic Beverage Control Commission

QUESTIONS PRESENTED:

May the Alcoholic Beverage Control Commission impose a fine pursuant to Section 4-29.10(1) of less than \$200.00?

May the Alcoholic Beverage Control Commission impose a penalty of \$200.00, but suspend a portion of the same?

STATUTES, CASES, ETC., INVOLVED:

[Board of Trustees, Etc., v. City of Huntington 152 W.Va. 217, 96 S.E.2d 225 \(1956\)](#)

[State v. Abbot 87 S.C. 466, 70 S.E. 6 \(1911\)](#)

[Investors Premium Corp. v. S.C. Tax Commission 260 S.C. 13, 193 S.E.2d 642 \(1973\)](#)

[Martin v. Nationwide Insurance Co. 256 S.C. 577, 183 S.E.2d 451 \(1971\)](#)

Ex Parte: [Moore v. Patterson 203 S.C. 90, 26 S.E.2d 319 \(1943\)](#)

1 Am Jur2d Administrative Law

Sections 4-27, 4-29.10, 4-27.7, 4-108.8, and 17-557, Code of Laws of South Carolina, 1962, as amended.

DISCUSSION OF ISSUE:

Section 4-29.10 Code of Laws of South Carolina, 1962, as amended, Sets forth certain penalties to be imposed by the South Carolina Alcoholic Beverage Control Commission in regard to violations of the provisions relating to the sale and consumption of alcoholic liquors in sealed containers of 2 ounces or less. These penalties are in addition to the criminal penalties imposed. The portion of said Section applicable to the questions presented states as follows:

[I]n addition any person who is licensed to sell alcoholic liquors pursuant to the provisions of this article who has in his possession on his licensed premises any alcoholic beverages in excess of 50 proof in containers other than sealed containers of 2 ounces or less or who displays such sealed containers when the seals are broken or who violates any other provision of this article (Article 2.2 of Title 4, Chapter 1) shall:

(1) For a first offense be fined not less than \$200.00 nor more than \$500.00 or, have his license suspended for not more than 30 days, or both; (emphasis added).

It is well recognized that words in a statute should be used in their ordinary and popular significance, unless there is something in the statute requiring different interpretation. [Martin v. Nationwide Mutual Ins. Co.](#) 256 S.C. 577, 183 S.E.2d 451 (1971); [Investors Premium Corp. v. S.C. Tax Commission](#) 260 S.C. 13, 193 S.E.2d 642 (1973). The word 'shall', when used in a statute connotes a 'mandatory sense,' unless there is something in the statute which shows a contrary intent on the part of the legislature. [Board of Trustees, Etc., v. City of Huntington](#), 152 W.Va. 217, 96 S.E.2d 225 (1956) There is little doubt that the use of the word 'shall' in Section 4-29.10 mandates the Alcoholic Beverage Control Commission to sanction the violator of Section 4-29.10(1) in the manner designated therein. That is, the Alcoholic Beverage Control Commission shall impose a punishment in one of the following manners: 1) a fine within the prescribed limits, or; 2) a suspension within the prescribed limit, or; 3) a fine and a suspension. If the Alcoholic Beverage Control Commission elects to impose a fine on the violator, Section 4-29.10 (1) provides that the fine shall be 'not less than \$200.00 nor more than \$500.00.'

\*2 Section 4-29.10(1) does not bestow upon the Alcoholic Beverage Control Commission the discretion to lower the prescribed fine or to suspend a portion of the same. If the Alcoholic Beverage Control Commission possesses this authority it would have to be found elsewhere. The Alcoholic Beverage Control Commission is unquestionably a creature of statute and its powers are dependent upon statute, so therefore, the Commission must find within the statutes creating it warrant for the exercise of any authority which the agency claims. Section 4-27, *et seq.*; 1 Am Jur2d [Admin. Law](#), Section 70. A review of the South Carolina Code of Laws, in particularly Title 4, reveals no authority which would permit the Alcoholic Beverage Control Commission to impose a fine or punishment different than that prescribed by Section 4-29.10(1) upon a violator thereof. There is no inherent authority which would permit the Alcoholic Beverage Control Commission to suspend a fine imposed pursuant to Section 4-29.10(1), as administrative agents possess no inherent powers.

[I]t is well settled that an administrative agency has no inherent powers . . . ' 1 Am. Jur2d Admin. Law, Section 70.

A question closely analogous to the issue presented herein, is whether a Court of law has the authority to suspend sentences in criminal matters. The Courts of this State have long recognized that this power is not inherent, and that such authority, if it exists at all, would have to be conferred upon the Court by the General Assembly. *Ex Parte*: [Moore v. Patterson](#), 203 S.C. 90, 265 S.E.2d 319 (1943); [State v. Abbot](#) 87 S.C. 466, 70 S.E. 6 (1911). Certainly, the same would be true in regard to an administrative agency.

#### CONCLUSION:

Section 4-29.10(1) mandates certain penalties that the Alcoholic Beverage Control Commission shall impose for violators thereof. The Commission does not have the statutory authority to impose fines or penalties different from those prescribed by said Section and there is no inherent power to do so. Therefore, it appears that there is no such authority which would permit the Alcoholic Beverage Control Commission to impose fines or punishments different than those prescribed.

Edwin E. Evans  
Assistant Attorney General

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