

1976 S.C. Op. Atty. Gen. 165 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4340, 1976 WL 22959

Office of the Attorney General

State of South Carolina

Opinion No. 4340

April 28, 1976

*1 If the provisions of § 4-27.3 of the 1962 Code of Laws of South Carolina (1975 Cum. Supp.) are applied, a municipality cannot pass an ordinance prohibiting absolutely the sale of beer with consumption on commercial establishments.

TO: Senator John A. Martin

QUESTION:

Is it a valid or proper use of the police power granted to a municipality in their charter to pass an ordinance prohibiting absolutely the sale of beer for consumption at commercial establishments?

AUTHORITIES:

§ 4-121 and § 4-122 of the 1962 Code of Laws of South Carolina, as amended;

§ 4-27.3 of the 1962 Code of Laws of South Carolina (1975 Cum. Supp.);

§ 47-61 of the 1962 Code of Laws of South Carolina, as amended;

§ 4-212 of the 1962 Code of Laws of South Carolina, as amended;

[Law v. City of Spartanburg](#), 148 SC 229, 146 SE 12 (1928);

[City of Charleston v. Jenkins](#), 243 SC 205, 133 SE2d 242 (1963);

[Arnold v. City of Spartanburg](#), 201 SC 523, 23 SE2d 735 (1943);

[Town of Honea Path v. Flynn](#), 255 SC 32, 176 SE2d 564 (1970).

DISCUSSION:

Section 47-61 of the 1962 Code of Laws of South Carolina grants to the municipalities the right to exercise some police powers as long as the laws which are passed by the municipality are not inconsistent with the laws of this State: Statutory grant of police power was limited only by the territorial confines of the municipalities authorized to exercise it and by the proviso that rules, by laws, regulations and ordinances adopted there-under could not be inconsistent with state laws.

Furthermore, municipalities are powerless to prohibit that which the state expressly permits, authorizes, directs or requires licenses. [Law v. City of Spartanburg](#), 148 SC 229, 146 SE 12 (1928).

Section 4-27.3 of the 1962 Code of Laws of South Carolina (1975 Cum. Supp.) specifically grants duty of regulating beer to the Alcoholic Beverage Control Commission:

All powers and duties of the South Carolina Tax Commission concerning the regulation of alcoholic beverages and beer and wine are hereby transferred to the ABC Commission.

Section 4-212(6) of the 1962 Code of Laws of South Carolina, as amended, states that the ABC Commission alone has the power to decide where beer will or will not be sold:

... the ABC Commission alone is to determine whether or not a proposed location for the sale of beer is a proper one.

Consequently, a municipal ordinance so broad as to prohibit the sale of beer and wine within town limits would be in direct conflict with legislation authorizing the sale of beer throughout the state and expressly delegating to a state agency the authority to determine the suitability of the proposed location. As a result, an ordinance to that effect would clearly be invalid and unenforceable. Town of Honea Path v. Flynn, 255 SC 32, 76 SE2d 564 (1970).

However, municipalities are not entirely exempt from the field of regulation. When such an ordinance is regulatory but not prohibitory in nature (as in the case of restricting hours of sale) it has been held to be a reasonable and valid exercise of the police power. City of Charleston v. Jenkins, 243 SC 205, 133 SE2d 242 (1963); Arnold v. City of Spartanburg, 201 SC 523, 23 SE2d 735 (1943).

CONCLUSION:

*2 It is the opinion of this office that if the provisions of § 4-27.3 of the 1962 Code of Laws of South Carolina (1975 Cum. Supp.) are applied a municipality is precluded from passing an ordinance prohibiting absolutely the sale of beer with consumption on commercial establishments.

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