

1976 S.C. Op. Atty. Gen. 216 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4379, 1976 WL 22998

Office of the Attorney General

State of South Carolina

Opinion No. 4379

JUNE 23, 1976

***1 An applicant seeking a sale and consumption license for a business establishment that was primarily and substantially engaged in the preparation and serving meals or the furnishing of lodging prior to March 16, 1972, is excepted from the absolute proscriptions of § 4–33.1 of the Code.**

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Director
Alcoholic Beverage Control Commission

QUESTION PRESENTED:

If the applicant for a sale and consumption license has been conducting a business on the premises prior to March 16, 1972, does the applicant come within the proscriptions of § 4–33.1 of the Code?

AUTHORITIES:

§ 4–29, et seq., Code of Laws of South Carolina, 1962, as amended.

§ 4–53, Code of Laws of South Carolina, 1962, as amended.

[Terry v. Pratt](#), 258 S.C. 177, 187 S.E.2d 884 (1972).

[Henderson v. McMaster](#), 104 S.C. 268, 88 S.E. 645 (1916).

[Cooper River Bridge, Inc., v. S.C. Tax Commission, et al.](#), 182 S.C. 72, 78, 188 S.E. 508 (1936).

45 Am Jur2d Intoxicating Liquors § 161.

DISCUSSION:

The South Carolina Alcoholic Beverage Control Commission has the discretion to issue or refuse to issue sale and consumption licenses. Section 4–29, et seq., Code of Laws of South Carolina, 1962, as amended; [Terry v. Pratt](#), 258 S.C. 177, 187 S.E.2d 884 (1972); 45 Am Jur2d Intoxicating Liquors § 161. However, § 4–29.3 of the Code prescribes certain requisites that an applicant for such a license must satisfy before the Commission can entertain its discretion as to the issuance or refusal of a sale and consumption license. If any of the four requisites set forth in § 4–29.3 of the Code are not satisfied, the Commission as a matter of law must refuse the issuance of the license.

In the question presented, it is stated that the applicant's place of business is located within three hundred (300#) feet of a church. Subsection (c) of § 4–29.3, by reference, incorporates the proscriptions of § 4–33.1. Said section proscribes the issuance of licenses to places of business located within three hundred (300#) feet of churches in municipalities. Clearly the licensing of the applicant's place of business would be prohibited by the provisions of § 4–33.1, if that section is applicable.

However, § 4–29.3(c) provides that the proscriptions of § 4–33.1 only apply to business establishments established after the effective date of the article. (Act No. 1063, Acts and Joint Resolutions of the 1972 General Assembly). The date this article of the law became effective was March 16, 1972. A business establishment is defined specifically throughout Act No. 1063, as a business ‘bona fide engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging’. Sections 4–29(4), 4–29.3(a) Code of Laws of South Carolina, 1962, as amended. The fact that subsection (c) of § 4–29.3 provides, implicitly, that ‘any business’ established after March 16, 1972, is excluded from the proscription of § 4–33.1, would not extend this exclusion to a business that was not ‘primarily and substantially engaged in the preparation and serving of meals or furnishing of lodging’ prior to March 16, 1972. In South Carolina it is well settled that:

*2 The rule (no citation necessary) in the construction of a statute is that general words, and it makes no difference how general, will be confined to the subject treated of. [Henderson v. McMaster](#), 104 S.C. 268, 272 88 S.E. 645 (1916); [Cooper River Bridge, Inc., v. S.C. Tax Commission, et al.](#), 182 S.C. 72, 78, 188 S.E. 508 (1936).

CONCLUSION:

Therefore, the general phrase ‘any business’ refers only to a business primarily and substantially engaged in the preparation and serving of meals or furnishing of lodging. A business of other functions established prior to March 16, 1972, would have to meet the requirements of § 4–33.1. The facts presented do not indicate if the business in question meets this particular requirement. If in fact it does so meet this requirement, the application would not be absolutely prohibited by § 4–29.3(c), but the issuance of the license would depend on whether the applicant meets the other requisite elements in the law and the Commission in its discretion determines that the issuance of the same is proper.

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