



ALAN WILSON
ATTORNEY GENERAL

September 16, 2021

The Honorable William S. Cogswell, Jr.
Member
South Carolina House of Representatives
310-B Blatt Building
Columbia, South Carolina 29201

Dear Representative Cogswell:

We received your letter requesting an Attorney General's opinion as to "whether S.C. Code Ann. § 61-6-4710, § 61-6-4060, or any other statute, prohibits a business from leasing out storage space to an event host to allow the event host to store, among other things, alcoholic beverages purchased and owned by the event host, with the event host being the end user of the alcoholic beverages." Additionally, you ask whether the same business may "offer a delivery service where he would assist in transporting the event host's stored items, including alcoholic beverages, from the refrigerated storage space to the event location."

Law/Analysis

The Alcoholic Beverage Control Act (the "ABC Act"), contained in chapter 6 of title 61 of the South Carolina Code, governs the transportation, possession, consumption, and sale of alcoholic beverages in South Carolina.¹ Under the ABC Act, section 61-6-4010 of the South Carolina Code (2009) makes it unlawful for a person to "manufacture, store, keep, receive, have in possession, transport, ship, buy, sell, barter, exchange, or deliver alcoholic liquors, except liquors acquired in a lawful manner and except in accordance with the provisions of this title . . ." (emphasis added). This provision makes any storage, possession, or transportation of alcoholic beverages illegal unless such storage, possession, or transportation is specifically allowed under the ABC Act. With this premise in mind, we will address your specific questions.

A. Storage of Alcoholic Beverages

As you note in your letter, section 61-6-4060 of the South Carolina Code (2009) addresses storing alcoholic beverages in a place of business and states:

(A) It is unlawful for a person to store or have in possession alcoholic liquors in his place of business other than a licensed liquor store. A place of business includes:

¹ The ABC Act indicates "alcoholic beverages" is synonymous with "alcoholic liquor," as used in the ABC Act. S.C. Code Ann. § 61-6-20(1)(a) (Supp. 2020).

- (1) A place where goods, wares, or merchandise are sold, offered for sale, or distributed, and also places of amusement;
- (2) Residences and transportation vehicles when sale of merchandise is made therefrom; and
- (3) Outbuildings, warehouses, and garages when adjacent to or used in connection with a place of business where goods, wares, or merchandise are sold, offered for sale, or distributed.

....

This provision makes it illegal to store alcoholic beverages in a place of business other than a licensed liquor store. This provision gives a detailed definition as to what is considered a place of business and includes businesses that distribute or sell goods or merchandise. Whether or not your constituent's business is a place of business for purposes of section 61-6-4060 involves a determination of the facts. As we stated numerous times, "this Office is not empowered to investigate or determine factual questions." Op. Att'y Gen., 2020 WL 2992184 (S.C.A.G. Mar. 11, 2020). However, it is our understanding that your constituent's business is not involved in the sales or distribution of goods or merchandise. You describe the business as providing storage for items such as food, beverages, decorations, and equipment; and leasing event items such as beverage dispensers, food storage, and serving containers for event hosts. Based on your description, we believe it is unlikely that your constituent's business meets the definition of "a place of business" under section 61-6-4060(A). Therefore, we do not believe the business would be prohibited from storing alcoholic beverages under section 61-6-4060.

However, as we noted above, section 61-6-4010 makes storage or possession unlawful unless it is provided for by the ABC Act. Most businesses' ability to possess alcoholic beverages stems from their status as a licensee. Manufacturers, wholesalers, and retail dealers are given the authority to possess alcoholic beverages under section 61-6-100 of the South Carolina Code (2009). Section 61-6-1620(A) of the South Carolina Code (2009), likewise, gives nonprofit organizations licensed under section 61-6-1600 and food-service establishments and places of lodging licensed under section 61-6-1610 the authority to possess alcoholic beverages.

In your letter, you mentioned your constituent contacted the Department of Revenue (the "Department") inquiring as to whether he would need a license. You informed us that the Department stated no license would apply to your constituent. We agree. Your constituent's business is not a manufacturer, wholesaler, or a retail dealer of alcoholic beverages allowing possession under section 61-6-100. Moreover, it does not appear that your constituent's business is a nonprofit, food-service establishment, or a place of lodging allowing possession under section 61-6-1620(A).

Nevertheless, section 61-6-1620(B) of the South Carolina Code (2009) may allow your constituent to possess alcoholic beverages without a license. This statute provides: “Alcoholic liquors may be possessed or consumed in separate and private areas of an establishment whether or not the establishment includes premises which are licensed pursuant to Sections 61-6-1600 or 61-6-1610, where specific individuals have leased these areas for a function not open to the general public.” S.C. Code Ann. § 61-6-1620(B). From your description, event hosts lease the storage units. Additionally, we understand the storage units would be private, accessible only by the event host, and not open to the public. However, it sounds like these storage units would be used merely for storage of the alcoholic beverages well as other supplies for a function, but the function will be held in another location. Therefore, we are unsure as to whether a court would conclude possession of alcoholic beverages in a storage unit is allowed pursuant to section 61-6-1620(B). As such, we cannot say with certainty that your constituent’s business has the legal authority to possess alcoholic beverages on its premises as it is not clearly provided for under the ABC Act.² Thus, we suggest you seek clarification from a court as to the interpretation of section 61-6-620(B). Alternatively, you could seek an amendment to the ABC Act to specifically allow for the storage of alcoholic beverages in leased storage units.

B. Individual Possession

You also ask whether storage of alcoholic beverages in a storage unit is prohibited under section 61-6-4710 of the South Carolina Code (2009). Section 61-6-4710 is in article 13 of the ABC Act, which addresses the authorized and unauthorized possession and consumption of alcoholic beverages by individuals and offers guidance as to who may possess alcoholic beverages and where they may be possessed. S.C. Code Ann. §§ 61-6-4000 *et seq.* Section 61-6-4010 of the South Carolina Code (2009) makes it unlawful for a person to “manufacture, store, keep, receive, have in possession, transport, ship, buy, sell, barter, exchange, or deliver alcoholic liquors, except liquors acquired in a lawful manner and except in accordance with the provision of this title” Section 61-6-4710 of the South Carolina Code, which you specifically inquired about, governs the lawful possession or consumption of alcoholic liquors by individuals. This provision states:

(A) A person who is twenty-one years of age or older may possess or consume lawfully acquired alcoholic liquors:

(1) in a private residence, hotel room, or motel room;

² We believe there is some question as to whether your constituent’s business would be in possession of alcoholic beverages stored on its premises. The ABC Act does not define possession, but our Court of Appeals addressed possession in regard to beer in in *State v. Stone*, 320 S.C. 395, 397, 465 S.E.2d 576, 577 (Ct. App. 1995). In that case, the Court indicated possession is determined by whether a person consciously and voluntarily has control over the liquor. This too is a factual determination and therefore, cannot be decided in an opinion. *See Op. Att’y Gen.*, 2006 WL 1207270 (S.C.A.G. Apr. 6, 2006). However, if the storage unit is leased by an event host who has exclusive access to the unit during the term of the lease, a court may find the event host, rather than your constituent, is in possession of the alcoholic beverages. As such, it would be the responsibility of the event host to establish legal possession.

(2) or on other property not engaged in business or commercial activity, at private gatherings, receptions, or occasions of a single and isolated nature and not on a repetitive or continuous basis, with the express permission of the owner and any other person in possession of the property, and to which the general public is not invited. However, this must not be construed to authorize the possession or consumption of alcoholic liquors on premises open to the general public for which a license has been obtained pursuant to Sections 61-6-1600 or 61-6-1610.

(3) in separate and private areas of an establishment whether or not the establishment includes premises which are licensed pursuant to Sections 61-6-1600 or 61-6-1610, where specific individuals have leased these areas for a function not open to the general public.

(B) It is unlawful for a person to possess or consume alcoholic liquors upon any premises where the person has been forbidden to possess or consume alcoholic liquors by the owner, operator, or person in charge of the premises.

A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.

S.C. Code Ann. § 61-6-4710. Under this statute, in order for an individual to legally possess alcoholic beverages, he or she must be at least twenty-one years of age and the possession must take place in one of the locations listed in subsections (A)(1), (A)(2), or (A)(3). Whether or not a storage unit qualifies as one of the allowed locations is a factual determination which must be made by a court. Op. Att’y Gen., 2018 WL 1160085 (S.C.A.G. Jan. 22, 2018) (“[T]his Office is not empowered to make factual findings in an opinion . . .”). Nevertheless, under the facts you provided to us, we do not believe a court would find subsections (A)(1) or (A)(2) apply to a leased storage unit. However, similar to our analysis above, a court may find under subsection (A)(3) a storage unit is a separate private area leased by a specific individual, which is not open to the public. But again, the storage unit itself would not be used to hold a function. Therefore, we cannot opine with certainty that an individual may legally possess alcoholic beverages in a storage unit pursuant to section 61-6-4710 and suggest your constituent seek clarification from a court or the Legislature.

C. Delivery Service

Lastly, you ask whether your constituent could offer a delivery service to assist in transporting event hosts’ alcoholic beverages from a storage unit to an event location. Like the possession and storage of alcoholic beverages, the ABC Act prohibits the transportation of alcoholic beverages except as provided for by the ABC Act. S.C. Code Ann. § 61-6-4010. Section 61-6-4020 of the South Carolina Code (Supp. 2020) addresses transportation of alcoholic beverages and states, “A

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person who is twenty-one years of age or older may transport lawfully acquired alcoholic liquors to and from a place where alcoholic liquors may be lawfully possessed or consumed.” This statute allows for the transport of alcoholic beverages so long as it is coming from a place it may be lawfully possessed or consumed and is being delivered to a place it may be lawfully possessed or consumed. Thus, whether your constituent may deliver alcoholic beverages depends on whether the storage units and the place where the alcoholic beverages will be consumed are places where alcoholic beverages may be legally possessed or consumed. As indicated above, we are unsure whether your constituent’s business or the individual event host can legally store alcohol in a storage unit. Therefore, we cannot fully address whether alcoholic beverages may be legally transported from such a location.

Conclusion

The ABC Act governs the transportation, possession, consumption, and sale of alcoholic beverages in South Carolina. Under the ABC Act, section 61-6-4010 of the South Carolina Code (2009) makes it unlawful for a person to “manufacture, store, keep, receive, have in possession, transport, ship, buy, sell, barter, exchange, or deliver alcoholic liquors, except liquors acquired in a lawful manner and except in accordance with the provisions of this title” Thus, whether or not your constituent’s business can store alcoholic beverages for event hosts depends on whether such storage is permitted under the ABC Act.

Section 61-6-4060 of the South Carolina Code specifically prohibits storage of alcoholic beverages in a place of business. Based on the information you provided, we do not believe your constituent’s business meets the definition of a “place of business” under section 61-6-4060 because it is not involved in the sale or distribution of goods or merchandise. Therefore, we do not believe your constituent’s business is prohibited from storing alcoholic beverages under section 61-6-4060. However, we also do not believe section 61-6-4060 provides a means by which your constituent’s business may legally store alcoholic beverages.

Generally, businesses are afforded the ability to store alcoholic beverage due to their status as a licensed premises. Based on your description of your constituent’s business, we agree with the Department of Revenue’s assessment that your constituent is not eligible for a license. However, section 61-6-1620(B) provides: “Alcoholic liquors may be possessed or consumed in separate and private areas of an establishment whether or not the establishment includes premises which are licensed pursuant to Sections 61-6-1600 or 61-6-1610, where specific individuals have leased these areas for a function not open to the general public.” While the determination of whether your constituent’s business qualifies under this provision is a factual question best determined by a court, it appears the storage unit would be leased to an event host and not open to the public. Nonetheless, considering the facts you provided to us, the area will not be used for the function itself, but just for storage. As such, we suggest your constituent seek clarification from a court to determine whether it may store alcoholic beverages pursuant to this provision. Alternatively, you may seek to amend the ABC Act to specifically allow for the storage of alcoholic beverages in private storage units.

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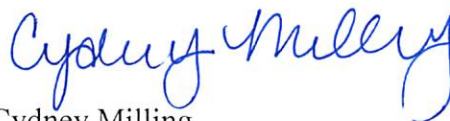
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In regard to whether an individual may store alcoholic beverages in a storage unit, we look to the provisions contained in article 13 of the ABC Act and specifically to section 61-6-4710, which allows possession of alcoholic beverages by individuals age twenty-one and older in three specified types of locations. We do not believe the storage unit qualifies as a location described in sections 61-6-4710(A)(1) or (A)(2). But, because the storage unit is a separate private area, leased by an event host, and is not open to the public, a court may find it qualifies under section 61-6-4710(A)(3). Again, we question whether this provision applies in the case of a storage unit as the event will be held at a separate location. Furthermore, this determination also involves questions of fact and is better resolved by a court.

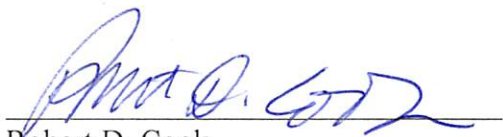
Lastly, section 61-6-4020 allows for the transportation of alcoholic beverages as long as the person transporting them is twenty-one years of age or older and the storage units are a place where alcoholic beverages may be possessed or consumed and the alcoholic beverages will be delivered to a location where they may be possessed or consumed. As explained above, we are uncertain as to whether a business may allow storage of alcoholic beverages in leased storage units and whether a particular individual has the ability to store alcoholic beverages in a storage unit. Because the ability to legally transport alcoholic beverages hinges upon its ability to be legally possessed at the locations from which and to it will be transported, we cannot say with clarity whether your constituent's business may legally transport alcoholic beverages for its event hosts.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General