



ALAN WILSON
ATTORNEY GENERAL

November 17, 2023

Lieutenant Sean M. Bailey
Chief Brian A. Trail
York Police Department
Post Office Box 500
York, South Carolina 29745

Dear Lieutenant Bailey and Chief Trail:

We received your letter requesting an opinion of this Office concerning whether someone staying as a guest in a motel, hotel, or other building primarily designed, built, and operated as transient lodging can become a tenant for purposes of South Carolina Landlord-Tenant Laws.

Law/Analysis

Lodging of transients is generally governed by the Lodging Establishment Act (the "LEA") contained in chapter 2 of title 45 of the South Carolina Code (2017). According to the provisions of the LEA, lodging establishments include "a hotel, motel, villa, condominium, inn, tourist court, tourist camp, campground, bed and breakfast, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration." S.C. Code Ann. § 45-2-20 (2017) (emphasis added).

Chapter 33 of title 27 of the South Carolina Code (2007) provides the law governing landlords and tenants and includes universal provisions governing leases. Chapter 40 of title 27 of the South Carolina Code (2007) contains the South Carolina Residential Landlord and Tenant Act (the "SCRLTA"), which governs the rental of dwelling units. Section 27-40-120 of the South Carolina Code specifically excludes "(4) transient occupancy in a hotel, motel, or other accommodations subject to the sales tax on accommodations as provided by § 12-36-920" from the provisions of the SCRLTA. Section 12-36-920 allows for the imposition of a sales tax on "gross proceeds derived from the rental or charges for any rooms, campground spaces, lodgings, or sleeping accommodations furnished to transients by any hotel, inn, tourist court, tourist camp, motel, campground, residence, or any place in which rooms, lodgings, or sleeping accommodations are furnished to transients for a consideration." Therefore, transients staying in hotels, motels, and other lodging facilities are generally excluded from the SCRLTA. However, section 12-36-920 states: "The gross proceeds derived from the lease or rental of sleeping accommodations supplied to the same person for a period of ninety continuous days are not considered proceeds from transients." Id. Accordingly, if a lease or rental of sleeping accommodations is provided to the

same person for a period more than ninety consecutive days, it would not be subject to the accommodations tax under section 12-36-920 and could be subject to the SCRLTA.

In your letter, you mention an opinion issued by this Office on October 16, 1986. We issued this opinion prior to the enactment of the LEA, but discussed whether hotel or motel customers could be ejected from the premises pursuant to the SCRLTA. Op. Att’y Gen., 1986 WL 289851 (S.C.A.G. Oct. 16, 1986). We first noted the South Carolina Supreme Court “‘expressly stated that without a contract between the parties, either express or implied, the landlord-tenant relationship cannot exist.’” Id. (quoting Stewart-Jones Co. v. Shehan, 127 S.C. 451, 121 S.E. 374 (1924)). We then noted section 27-40-120(4) excludes the application of the SCRLTA to transient occupancy in a hotel, motel, or other accommodations. Id. However, we ultimately concluded a determination must be made on a case-by-case basis, stating:

[T]he particular situation would have to be examined. As noted, the mere fact that a hotel or motel is involved does not resolve the question. In some situations, depending on the “contract” between the parties, a landlord-tenant relationship may exist. However, typically, it appears that in a situation where an individual is a transient occupant of a hotel or motel, provisions applicable to a landlord-tenant relationship, such as the procedure for ejection of tenants, would not apply.

Id.

In a 1994 opinion, just after the enactment of the LEA, we explored the intersection of the LEA and the SCRLTA when asked about the application of the LEA to what would otherwise be considered transient guest renting a lodging establishment on a month-to-month basis. Op. Att’y Gen., 1994WL 444278 (S.C.A.G. July 26, 1994). We determined:

If one rents or leases sleeping accommodations for a period of ninety (or more) consecutive days, such would not be considered transient, would not be subject to the accommodations tax, and could be governed by the Residential Landlord and Tenant Act.

If one is not considered transient and thus is governed by the Residential Landlord and Tenant Act, it would appear that the Lodging Establishment Act would not then apply, as such provision of lodging would not seem to be on a transient basis. To determine which act would apply to a given situation, it would appear to be necessary to determine whether an individual is a transient, i.e., whether that individual has entered into a rental or lease arrangement for ninety consecutive days with the particular establishment. Such determination will have to be made on a case-by-case basis.

Id.

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In keeping with these opinions, we continue to believe a person occupying a hotel, motel, or other lodging accommodation for less than ninety days would fall under the provisions of the LEA. However, if a person occupies such premises for ninety consecutive days or more, that individual would not be considered a transient and therefore, the provisions of the SCRLTA could apply. Nonetheless, whether the SCRLTA applies depends upon whether a landlord tenant relationship has been established by contract, either express or implied. We reiterate that this determination must be made on a case-by-case basis.

Conclusion

The Lodging Establishment Act regulates the terms upon which innkeepers may provide lodging to their customers. S.C. Code Ann. §§ 45-2-10 et seq. Whereas the South Carolina Residential Landlord Tenant Act governs the rights and obligations of landlords and tenants. The determination of which of these acts applies in a given situation must be on a case-by-case basis. However, section 27-40-120(4) states the SCRLTA does not apply to “transient occupancy in a hotel, motel, or other accommodations subject to the sales tax on accommodations as provided by § 12-36-920.” S.C. Code Ann. § 27-40-120(4). Transients are subject to sales tax on accommodations unless the accommodations are provided to them for a period of ninety consecutive days. S.C. Code Ann. § 12-36-920. As such, a person occupying a hotel, motel, or other lodging accommodations for a period of less than ninety consecutive days, is excluded from the SCRLTA and therefore, would fall under the LEA. However, a person occupying such facilities longer than ninety consecutive days may fall within the SCRLTA, but for the provisions of the SCRLTA to apply, a landlord tenant relationship must be established through an express or implied contract between the parties.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General