



ALAN WILSON
ATTORNEY GENERAL

June 09, 2025

The Honorable Sylleste Davis
Member
South Carolina House of Representatives
Post Office Drawer 11867
Columbia, SC 29211

Dear Representative Davis:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter requests an opinion addressing the following:

Is it the opinion of the Attorney General that South Carolina statutes, not limited to but including S.C. Code § 16-17-501, would define a vape shop as a tobacconist?

Law/Analysis

The South Carolina Code of Laws does not define the term “tobacconist.” Our research has only located one South Carolina case that included the expression, but it was used to describe those persons who used a roadway to determine whether it was a public road and was otherwise unexamined. See Strother v. S.C. & G.R. Co., 47 S.C. 375, 25 S.E. 272, 273 (1896).

There are several statutes within the code addressing tobacco, some of which regulate electronic smoking devices in the same manner as other tobacco products and others that are specifically limited to articles containing tobacco. Your letter refers to S.C. Code § 16-17-501 as one such relevant statute. It defines terms in criminal statutes related to tobacco products. Therein, subsection (3) defines “electronic smoking device” to mean:

any device that may be used to deliver any aerosolized or vaporized substance, including e-liquid, to the person inhaling from the device including, but not limited to, an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. “Electronic smoking device” includes any component, part, or accessory of the device, and also includes any substance intended to be aerosolized or vaporized during the use of the device

whether or not the substance includes nicotine. “Electronic smoking device” does not include drugs, devices, or combination products authorized for sale by the U.S. Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act.

Id. This statutory term is broadly defined to include what would commonly be understood as vape products. Next, subsection (8)(b) defines “tobacco product” to mean “any electronic smoking device as defined in this section and any substances that may be aerosolized or vaporized by such device, whether or not the substance contains nicotine.” Finally, subsection (9) defines “tobacco retail establishment” to mean “any place of business where tobacco products are available for sale to the general public. The term includes, but is not limited to, grocery stores, tobacco product shops, kiosks, convenience stores, gasoline service stations, bars, and restaurants.” Id. Under this definition, a business which sells electronic smoking devices would be considered a tobacco retail establishment. However, the term clearly includes more types of businesses than what one might commonly think of as a tobacco or cigar shop as it also includes businesses whose sale of tobacco products may not be a central focus, such as grocery stores or restaurants.

Other statutes limit their application to cigarettes and tobacco products. For instance, section 12-21-620 applies taxes on products containing tobacco.

There shall be levied, assessed, collected, and paid in respect to the articles containing tobacco enumerated in this section the following amounts:

(1) upon all cigarettes made of tobacco or any substitute for tobacco, three and one-half mills on each cigarette;

(2) upon all tobacco products, as defined in Section 12-21-800, five percent of the manufacturer's price.

S.C. Code § 12-21-620 (A). “Tobacco products” is defined as:

cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut, and other chewing tobacco, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in a manner to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing or smoking, but does not include cigarettes.

S.C. Code § 12-21-800. South Carolina Department of Revenue's website clarifies that vaping products are not included under this statute. "No. Vaping products and all other products delivered through an aerosolized solution are not subject to the tax. The tax on tobacco products applies to forms of tobacco prepared in a manner suitable for chewing, smoking, or other consumption." Other Tobacco Products, S.C. Dep't. of Revenue, <https://dor.sc.gov/tax-index/miscellaneous/tobacco>, (last visited June 9, 2025). Additional chapters within the South Carolina Code are limited to products including leaf tobacco, such as Title 11, Chapter 48 concerning the Tobacco Escrow Fund Act and Title 46, Chapter 30 establishing the South Carolina Tobacco Community Development Board.

Conclusion

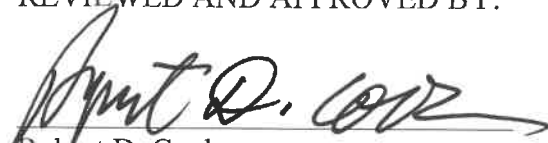
The South Carolina Code of Laws does not define the term "tobacconist." It is this Office's opinion that a vape shop would be regulated as a "tobacco retail establishment." S.C. Code § 16-17-501. However, tobacco retail establishment includes more types of businesses than what one might commonly think of as a tobacco or cigar shop as it also includes businesses whose sale of tobacco products may not be a central focus, such as grocery stores or restaurants. As is discussed more fully above, there are several statutes regulating tobacco that would not include vape products. It will depend on which statutory scheme one is examining to determine whether a vape shop is regulated thereunder.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General