

The State of South Carolina

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July 3, 1991

The Honorable James H. Harrison
Member, House of Representatives
420-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Harrison:

You have requested the opinion of this Office whether your interpretation that South Carolina Code Section 61-9-180 (1991 Act No. 166, Section 3) prohibits the inter-retail transfer of beer between single-owned retail outlets that are located in different wholesaler territories is legally correct. I concur in your interpretation of this newly enacted provision.

Section 61-9-180 provides:

The holder of multiple retail beer and wine permits may transfer beer and wine from one permitted location to another if both locations are permitted to the same person, partnership or corporation and, for beer, are in the same beer wholesaler territory defined in Section 61-9-1100.

I emphasize at the outset that statutory interpretation is the province of the courts, Johnson v. Pratt, 200 S.C. 315, 20 S.E.2d 865 (1942); thus, any comments I may have are simply advisory and reflect my reading as to how the courts may ultimately interpret this provision. Of course, this newly-enacted provision has not heretofore been construed by either the courts of this State or the Office of Attorney General; accordingly, there are no authoritative interpretations of this newly-enacted statute.

In attempting to ascertain the legislative intent underlying this provision, I am guided by two prominent rules of statutory

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construction recognized by our courts. The first is that where the General Assembly has expressly authorized a particular course of conduct or activity, this express authorization is intended to exclude activities or conduct that is not expressly mentioned. This rule is commonly referred to as "expressio unius est exclusio alterius." Little v. Town of Conway, 171 S.C. 27, 171 S.E. 447 (1933). This rule of statutory construction is applied to statutory provisions, such as Section 61-9-180, that prescribe or authorize a particular form of conduct and the persons and things to which it infers. Sutherland, Statutory Construction, § 47.23. Further, this rule

. . . is a product of 'logic and common sense.'
It expresses the learning of common experience
that when people say one thing they do not mean
something else.

Id., § 47.24 [cites omitted].

A second well-regarded rule of statutory interpretation is that a statute must be construed in light of the circumstances and conditions existing at the time of its enactment. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956); Timmons v. South Carolina Tricentennial Commission, 254 S.C. 378, 175 S.E.2d 805 (1970), app. dis., cert. den. 400 U.S. 986. And in construing a statute, it is proper to consider the history of the period in which the statute was passed. City of Spartanburg v. Blalock, 223 S.C. 252, 75 S.E.2d 361 (1953). It must be presumed that the Legislature is fully aware of contemporaneous events that relate to the legislation and, further, that the Legislature acted with an intention to address those matters. 73 Am. Jur. 2d, Statutes, §§ 165, 168 and 181. Both of these prominent rules of statutory construction guide to the conclusion that your interpretation of Section 61-9-180 is consistent with the legislative intent.

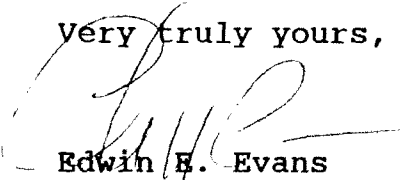
Section 61-9-180 specifically authorizes a holder of a retail beer permit to transfer beer from one permitted location to another if both locations are permitted to the same individual, partnership or corporation, respectively, and if both locations are located in the same "wholesale territory" as that phrase is defined in South Carolina Code Section 61-9-1100. Applying the standard that when the General Assembly has expressly authorized a particular form of conduct they did not intend to authorize other forms of that conduct, it appears reasonably clear that the transfer of beer from one retail outlet to another is permitted only as specifically authorized in Section 61-9-180. This conclusion is particularly appropriate since the transfer of beer within the State of South Carolina is highly regulated by the General Assembly. See, e.g., South Carolina Code Sections 61-9-315 and 61-9-1100.

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Further, the ABC Commission had previously determined in a judicial proceeding that the "holder of multiple beer permits is prohibited from purchasing large quantities of beer from a wholesaler and then transferring [transshipping] that beer to [retail] locations operated by [the] permittee outside the territory assigned by the wholesaler by the brewery and filed with the Commission." In the matter of Winn Dixie, entered July 15, 1987. Prior to its holding in In the Matter of Winn Dixie, the Alcoholic Beverage Control Commission had interpreted the ABC laws as prohibiting the inter-territorial transfer of beer from one retail outlet to another. Most recently, however, the Commission proposed in an interpretative ruling [ABC Ruling 91-12] issued February 4, 1991, to expand this holding in Winn Dixie with an additional prohibition against inter-retail beer transfers within a single wholesale territory or district by a single permittee. It is reasonable to assume that this proposed recent administrative change gave rise to the legislative enactment and, thus, likely that the courts would construe Section 61-9-180 to effect a legislative intent to return to the status of the law as declared in the Winn Dixie decision.

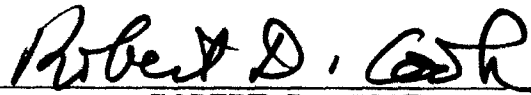
Please advise if I may provide any further assistance.

Very truly yours,


Edwin E. Evans
Chief Deputy Attorney General

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REVIEWED AND APPROVED:


ROBERT D. COOK
Executive Assistant for Opinions