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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 29, 1996

The Honorable James L. M. Cromer, Jr.
Member, House of Representatives
420A Blatt Building
Columbia, South Carolina 29211

Re: Informal Opinion

Dear Representative Cromer:

You state the following in your recent letter to this Office:

[i]t has been brought to my attention that a situation exists where some law enforcement officers are questioning whether or not they have the authority to enforce South Carolina Code Sections 12-36-550 and 12-36-560. It makes reference to the Tax Commission but never specifically addresses who can actually enforce the law. If you could write an informal opinion to clarify this confusing point, I would be most appreciative.

South Carolina Code Ann. Section 12-36-510 et seq. establishes a retail license tax. Section 12-36-510 (A) (1) states that

(A) Before engaging in business:

(1) Every retailer shall obtain a retail license for each permanent branch, establishment, or agency and pay a license tax of fifty dollars for each retail license at the time of application.

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Certain exceptions are made to the imposition of the tax. Section 12-36-550 provides that the license "(1) is valid so long as the person to whom it is issued continues in the same business, unless revoked by the [Tax] commission." This Section further requires conspicuous display of the license "at the place for which it is issued ..." and forbids assignment or transfer of the license.

A criminal offense and penalties for violation of the license law are established by Section 12-36-560. That Section provides:

[a] person liable for the license tax provided by this article who engages in business as a seller or retailer in this State without a retail license or after the license has been suspended, and each officer of a corporation which engages in business without a retail license or after the license is suspended, is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than two hundred dollars or imprisonment not exceeding thirty days, or both. Offenses under this section are triable in magistrate's court.

Finally, Section 12-36-570 states that a "person liable for the license tax provided by this article who fails to pay the tax or obtain the license within the time provided or who fails to comply with a lawful regulation of the commission is liable for a penalty not to exceed five hundred dollars."

Your question relates to whether local law enforcement officers may enforce the criminal penalties of the retail license tax provision as contained in Section 12-36-560 or whether exclusive enforcement authority is vested in the Revenue Department. It is my opinion that no express requirement of the relevant statutes limits enforcement authority and that local law enforcement officers may enforce the law as any other criminal statutes.

Of course, in interpreting any statute, the primary purpose is to ascertain the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). In construing a statute, a court cannot read into the statute something not within the manifest intention of the Legislature as gathered from the statute itself. Laird v. Nationwide Ins. Co., 243 S.C. 388, 134 S.E.2d 206 (1964). The words used must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). It is presumed that the Legislature is familiar with prior statutes

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relating to the same subject matter. Bell v. S. C. State Highway Dept., 204 S.C. 462, 30 S.E.2d 65 (1944).

Also, it is recognized that:

[a] prosecution under a [licensing statute or] ordinance is generally looked on as a criminal proceeding aimed at imposition of the fine or other penalty, rather than as a proceeding to collect the unpaid license charge

51 Am.Jur.2d, Licenses and Permits, § 148. Moreover,

[e]ngaging in an occupation or business or exercising a privilege for which a license, registration or tax is required in violation of license or registration statutes or ordinances, constitutes a criminal offense

53 C.J.S. Licenses, § 82. Nothing contained in the statutes relating to the retail license tax limits enforcement of the criminal provisions thereof to the Revenue Department, Tax Commission or its agents. This is a clear indication that the Legislature did not intend to limit enforcement to these authorities.

Moreover, a deputy sheriff is empowered to "use every means to prevent or detect, arrest and prosecute for ... the violation of every law which is detrimental to the peace, good order and morals of the community." Section 23-13-70. The oath of a deputy requires him to "enforce the criminal laws of the State" Likewise, police officers are vested with all the powers and duties conferred by law upon constables ... " within their jurisdiction. Section 5-7-110. A constable is empowered to enforce any state statute. Section 23-1-60; State v. Luster, 178 S.C. 199, 182 S.E. 427 (1935). With these statutory authorities in mind, it is evident that if the Legislature wished to limit enforcement to specific or certain officers, it would have said so.

This Office has consistently concluded that local law enforcement officers may enforce any criminal statutes unless the statute indicates otherwise. For example, with respect to the enforcement of criminal provisions relating to the sale of beer and wine, we said in Op. Atty. Gen., No. 85-48 (April 30, 1985)

[e]ven though a county is not authorized to regulate by ordinance such matters as the hours of sale of beer and wine inasmuch as such are within the control of the State, local law

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enforcement officers are authorized to enforce state law provisions dealing with such matters. In an opinion dated January 16, 1985 this Office dealt with the question of whether a certain municipality was empowered to enforce an ordinance in that part of the municipality which lies below the high water mark of a body of water which was within its municipal limits. ... [t]he opinion "stated that local law enforcement officers could enforce any State statutes upon that part of the municipality which lies below the high water mark of the body of water which was within the municipal limits. Similarly, even though a county cannot regulate the hours beer and wine may be sold within the county, Section 61-5-190 does not limit the authority of local law enforcement officers to enforce state law provisions dealing with alcoholic beverages Thus, such officers could enforce these laws without being accompanied by State Alcoholic Beverage Control Commission agents. [emphasis added].

And, in an Opinion dated February 18, 1966, we concluded that a sheriff could enforce the laws relating to refusal to surrender a drivers license which has been suspended noting that "county authorities [could] ... pursue the matter by seeking warrants charging violations"

Finally, in 1941-42 Op. Atty. Gen. 257 (July 24, 1941) we addressed the question as to who could enforce the law relating to the practice of architecture without a license. There, we stated:

... while this Act contains no specific wording making it the duty of the Board of Architectural Examiners to prosecute those who violate the terms of the Act, it is always permissible as to criminal law, that any person who knows that a law has been violated to go before a magistrate and make affidavit setting forth the particulars of the violation. Upon this affidavit, if deemed sufficient, the magistrate may issue a warrant for the arrest of the person charged therein.

Accordingly, based upon the foregoing, as I see nothing in the retail license tax statutes indicating to the contrary, it is my opinion that local law enforcement authorities can enforce this criminal statute just as they would any other criminal offense.

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This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to be 'RDC', written over a horizontal line.

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph