



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

January 2, 2001

Paul A. Sandifer, Ph.D.  
Director, South Carolina Department  
of Natural Resources  
Post Office Box 167  
Columbia, South Carolina 29202

Re: SC Code Ann. §61-6-4710

Dear Dr. Sandifer:

In your letter of April 25, 2000, you request an "opinion concerning the law in South Carolina on possession and consumption of alcoholic liquors on vessels." Specifically, you ask: "[d]oes §61-6-4710 of the South Carolina Code of Laws prohibit the possession and consumption of alcoholic liquors on vessels while on the waters of this State?"

S.C. Code Ann. § 61-6-4710 provides:

(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) 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.

When interpreting the meaning of a statute, a few basic principles must be observed. The primary goal is to ascertain the intent the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). The clear and unambiguous terms of a statute must be applied according to their literal meaning. State v. Blackmon, supra. Further, penal statutes must be strictly construed against the State. Commercial Credit Corporation v. Webb, 245 S.C. 53, 138 S.E.2d 647 (1964).

There seems to be little ambiguity in the words and phrases used in §61-6-4710. The statute provides that it is legal for a person 21 years of age to possess and consume lawfully acquired alcoholic liquors in the following places: 1) a private residence, hotel room or motel room; 2) on other non-commercial or non-business property (subject to some limitations); 3) at private gatherings (subject to some limitations); and, 4) in separate and private areas of establishments which have been leased by specific individuals.

Areas which have been excepted from the provisions of §61-6-4710 include property which is engaged in business and commercial activity and which the general public is invited, private gatherings without the consent of the owner of the property and which occur on a repetitive or continuous basis and are open to the general public, premises open to the general public which have a license pursuant to §§61-6-1600 or 61-6-1610, leased private areas which are "open to the public," and premises where a person has been forbidden to possess or consume alcoholic liquor by the owner.

Nowhere in §61-6-4710 is there an exception which would preclude the mere possession or consumption of alcoholic liquors on a vessel or boat. Exceptions contained in a statute give rise to a strong inference that no other exceptions were intended. Pa. Natl. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (S.C. App. 1984). Where terms of a statute are positive and unambiguous, exceptions not made by the Legislature cannot be read in by implication. Vernon v. Harleysville Mut. Cas. Co., 244 S.C. 152, 135 S.E.2d 841 (1964). Moreover, it is apparent that when the Legislature intended to prohibit the possession or consumption of alcoholic liquors in particular areas, specific legislation was enacted (or exemptions included in §61-6-4710). For example, §61-6-4720 prohibits the consumption of alcoholic liquor in a public conveyance, §61-6-4700 makes unlawful the drinking of alcoholic liquors "on the premises of a retail, wholesale, or manufacturing

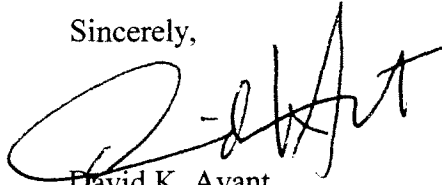
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alcoholic liquor business or business establishment,” and §61-6-420 prohibits the transporting of alcoholic liquors in the passenger compartment of a motor vehicle if the cap or seal on the container has been opened or broken.

Given the above and the fact that §61-6-4710 is a penal statute subject strict construction standards, it is my opinion that the statute, in and of itself, does not “prohibit the possession and consumption of alcoholic liquors on vessels while on the waters of this state.” If it is the position of the Department of Natural Resources that the statute was intended by the General Assembly to prohibit such, I would strongly suggest legislative clarification be sought.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant  
Assistant Attorney General

DKA/an