

7866 Library



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

November 15, 2004

The Honorable John M. Knotts, Jr.
Senator, District No. 23
500 West Dunbar Road
West Columbia, South Carolina 29169

Dear Senator Knotts:

In a letter to this office you referenced the proposed marketing of a liquid vaporizer machine. You stated as follows:

A constituent of mine has contacted me who is intending to market a liquid vaporizer machine primarily to bars in this State. After purchasing their minibottle, the customer or bartender simply pours the contents into a diffuser capsule (instead of a glass). A tube from the machine brings oxygen to the capsule where it mixes with the liquid to form a vapor that the customer then inhales through their mouth.

You have questioned whether there are any State laws which would prohibit the purchase and use of the referenced machine by a retail minibottle account in conjunction with legally purchased minibottles.

I have reviewed the various statutes that regulate the sale of alcoholic liquors in this State, including those provisions which presently allow the sale of liquor in minibottles. Legislation was enacted in the past legislative session which authorized a constitutional amendment to Article VIII-A, Section 1 of the State Constitution so as to delete the provision allowing the sale of alcoholic liquors for consumption in sealed containers of two ounces or less. While that amendment was voted on by the public in the recent general election, pending ratification, the present statutes authorizing the sale of alcoholic liquors in minibottles would still control. Based upon my review of such statutory provisions, I am unaware of any provision which would authorize the use of liquid vaporizer machines as described by you in this State.

As recognized in a prior opinion of this office dated December 9, 1998, pursuant to the Twenty-First Amendment to the United States Constitution, the various states in this country

...possess almost absolute power to prohibit or regulate alcoholic beverages. Wide latitude as to choice of the means to accomplish such prohibition or regulation is accorded to the state and its regulatory agencies.

The Honorable John M. Knotts, Jr.
Page 2
November 15, 2004

See also: Winter v. Pratt, 258 S.C. 397, 189 S.E.2d 7 (1972); Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). As similarly noted in another opinion of this office dated July 26, 1983,

The Twenty-first Amendment cloaks the State with virtual plenary powers in the regulation of intoxicants "destined for use, distribution or consumption within its borders."...(Quoting Hostetter v. Idlewild Liquor Corp., 377 U.S. 324, 330)... "This view of the scope of the Twenty-first Amendment with respect to a State's power to restrict, regulate or prevent the trafficking and distribution of intoxicants within its borders has remained unquestioned."

Therefore, states have wide latitude in choosing how to accomplish the regulation of alcoholic liquors.

Statutes have been enacted which expressly authorized the sale and consumption of liquor in minibottles. See: S.C. Code Ann. §§ 61-6-1600, 61-6-1610 (Supp. 2003). S.C. Code Ann. § 61-6-1620 (Supp. 2003), a companion statute to Sections 61-6-1600 and 61-6-1610, states that

This article must not be construed to authorize the possession or consumption of alcoholic liquors in containers other than minibottles on premises open to the general public for which a license has been obtained pursuant to Sections 61-6-1600 and 61-6-1610.

A criminal penalty is provided by S.C. Code Ann. § 61-6-2600 (Supp. 2003) as to an individual who "transports, possesses or consumes alcoholic liquors except in a manner permitted by this article." Based upon my review, no statutory provision specifically authorizes the consumption of the contents of a minibottle utilizing a liquid vaporizer machine. Absent such specific statutory authorization, in my opinion, utilization of such a machine would be illegal in this State.


If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General