



ALAN WILSON
ATTORNEY GENERAL

February 8, 2011

John B. Williams
Town Attorney for St. Stephen, SC
209 E. Main St.
Moncks Corner, SC 29461

Dear Mr. Williams:

We received your letter requesting an opinion of this Office concerning Sunday sales of alcoholic beverages. You asked whether “businesses [can] obtain a permit[,] providing all other regulations are met, even though the Town itself has not enacted an ordinance.”

In the request letter, you explained that Berkeley County, where the town of St. Stephen is located, recently passed an ordinance allowing the Sunday sales of alcoholic beverages. However, the town of St. Stephen has not enacted the ordinance nor held a referendum.

Law/Analysis

County Ordinance

S.C. Code § 4-9-25 states as follows:

All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

S.C. Code § 4-9-25.

Mr. Williams
Page 2
February 8, 2011

In an opinion of this Office dated June 12, 2009, we explained the validity of county ordinances as follows:

Our courts employ a two-step process to determine the validity of a local ordinance. Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008).

The first step is to ascertain whether the county had the power to enact the ordinance. If the state has preempted a particular area of legislation, then the ordinance is invalid. If no such power existed, the ordinance is invalid and the inquiry ends. However, if the county had the power to enact the ordinance, then the Court ascertains whether the ordinance is inconsistent with the Constitution or general law of this state.

South Carolina State Ports Auth. v. Jasper County, 368 S.C. 388, 395, 629 S.E.2d 624, 627 (2006).

To preempt an entire field, “an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way.” Bugsy’s, 340 S.C. at 94, 530 S.E.2d at 893 (citing Town of Hilton Head Island v. Fine Liquors, Ltd., 302 S.C. 550, 397 S.E.2d 662 (1990)). Furthermore, “for there to be a conflict between a state statute and a municipal ordinance ‘both must contain either express or implied conditions which are inconsistent or irreconcilable with each other... . If either is silent where the other speaks, there can be no conflict between them. Where no conflict exists, both laws stand.’” Town of Hilton Head Island v. Fine Liquors, Ltd., 302 S.C. at 553, 397 S.E.2d at 664 (quoting McAbee v. Southern Rwy., Co., 166 S.C. 166, 169-70, 164 S.E. 444, 445 (1932)).

Foothills Brewing Concern, Inc. v. City of Greenville, 377 S.C. 355, 361, 660 S.E.2d 264, 267 (2008).

Op. S.C. Atty. Gen., June 12, 2009. It is without question that Berkley County has the authority to pass an ordinance regarding the Sunday sale of alcohol. See, S.C. Code § 61-4-120; S.C. Code § 61-4-620; Denene, Inc. v. City of Charleston, 359 S.C. 85, 596 S.E.2d 917 (2004).

Town Enactment

While the county ordinance is valid and enforceable, the county ordinance is not automatically applicable within the town.

In a prior opinion, this Office concluded that a **county ordinance “cannot be made applicable within the municipalities unless their respective governing bodies consent thereto.”** Op. S.C. Atty. Gen., September 24, 1979 (emphasis added). “A county ordinance does not have to be

Mr. Williams
Page 3
February 8, 2011

incorporated in the City [or Town] Code to be enforceable . . . a simple agreement between the City [or Town] and the County” would be sufficient. Op. S.C. Atty. Gen., April 21, 1998.

In an opinion of this Office dated May 20, 1996 we discussed a similar issue where the Pickens County Council enacted a county ordinance concerning demonstrations which mostly affected the County Administration Building that was located within the corporate city limits of Pickens. In the opinion, we presumed that the Town of Pickens had not adopted an identical ordinance to that of the county. When addressing the question of whether the county ordinance is enforceable within city limits, we concluded as follows:

[I]t has consistently been the opinion of this Office that **the only way a county ordinance could be made applicable to an incorporated area is by virtue of an agreement between the two political subdivision**, to the effect that county ordinances are applicable within the city limits.

Op. S.C. Atty. Gen., May 20, 1996 (emphasis added).

Counties and other municipalities may agree to jointly administer services or exercise powers, but “a county could not exercise power within an incorporated municipality unless such an agreement existed or, in effect, the municipality has assented to the county’s exercise of power.” Ops. S.C. Atty. Gen., May 20, 1996; February 25, 1988. Article VIII, Section 13 of the South Carolina Constitution specifically provides as follows:

[a]ny county, incorporated municipality or other political subdivision may agree with the State or with any political subdivision for the joint administration of any function and exercise of powers and the sharing of costs thereof.

Nothing in this constitution shall be construed to prohibit the State or any of its counties, incorporated municipalities or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State.

Article VIII, Section 13 of the South Carolina Constitution.

Conclusion

Consistent with our prior opinions, it is the opinion of this Office that businesses within the Town of St. Stephen would not have the authority to obtain a license for Sunday alcohol sales. The ordinance enacted by Berkeley County cannot be made applicable within the Town of St. Stephen unless the respective governing bodies consent to the Berkeley County ordinance. The only way a county ordinance is made applicable to an incorporated area is by virtue of an agreement between the two political subdivisions. If the Town of St. Stephen and Berkeley County agree that the Town

Mr. Williams
Page 4
February 8, 2011

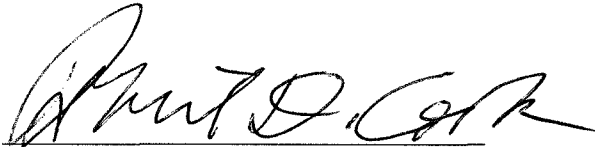
of St. Stephen will consent to the Berkeley County ordinance, then it is the opinion of this Office that a court would likely find that businesses within the Town of St. Stephen can obtain a license for Sunday alcohol sales.

Sincerely,



Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General