



HENRY MCMASTER
ATTORNEY GENERAL

December 11, 2008

Scott Dadson, City Manager
City of Beaufort
Post Office Box 1167
Beaufort, South Carolina 29901

Dear Mr. Dadson:

In a letter to this office you referenced a proposed ordinance for the City of Beaufort which would allow a business establishment to sell alcoholic beverages to their customers who dine on the sidewalk. The ordinance states that "the area designated or the sidewalk café shall be considered an extension of the business." You have questioned whether a liquor license can be extended to allow for such sales.

Generally, pursuant to S.C. Code Ann. § 61-2-80

[t]he State, through the department¹, is the sole and exclusive authority empowered to regulate the operation of all locations authorized to sell beer, wine, or alcoholic liquors, is authorized to establish conditions or restrictions which the department considers necessary before issuing or renewing a license or permit, and occupies the entire field of beer, wine, and liquor regulation except as it relates to hours of operation more restrictive than those set forth in this title.

S.C. Code Ann. § 61-6-1610 states that

(A)[e]xcept on Sunday, it is lawful to sell and consume alcoholic liquors sold by the drink in a business establishment between the hours of ten o'clock in the morning and two o'clock the following morning if the establishment meets the following requirements:

¹S.C. Code Ann. § 61-2-10(1) defines "department" as the South Carolina Department of Revenue.

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(1) the business is bona fide engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging; and

(2) the business has a license from the department authorizing the sale and consumption of alcoholic liquors by the drink, which is displayed conspicuously on the main entrance to the premises and clearly visible from the outside.

(B) [n]otwithstanding another provision of this article, the licensed premises of a business establishment which is bona fide engaged primarily and substantially in the preparation and service of meals and which holds a valid license for the sale and consumption of alcoholic liquors by the drink do not extend to any portion of the business establishment or the property upon which it is located which is designed as or used for a parking area even though food may be served in the area.

With reference to your question, it must be determined what may be considered the licensed premises of a business establishment. As set forth, it is specifically provided that the premises "...do not extend to any portion of the business establishment or the property upon which it is located which is designated as or used for a parking area even though food may be served in the area."

Regulation 7-401.1 dealing with alcoholic beverages, beer and wine defines in part the term "premises" as "...the physical place at which a licensee is or may be licensed to engage in the sale, serving and storage of alcoholic beverages..." The term "licensed premises" is defined by such regulation as "...premises for which a license under Article 5 of Chapter 6 of Title 61...(which includes Section 61-6-1610)...of the 1976 Code, is in force and effect." Subsection (C) of such regulation again exempts parking lots from being considered part of a licensed premises.

Section 61-6-1610 ties the sale and consumption of alcoholic beverages by the drink to licensed establishments "...engaged primarily and substantially in the preparation and serving of meals or furnishing of lodging..." excluding specifically only areas used as a parking area. An opinion of the Tennessee Attorney General, Op. No. 80-280A dated June 2, 1980, analyzed a question similar to yours concluding that the pertinent Tennessee statute

...requires that the sale of alcoholic beverages be conducted in the same manner as the sale of food. Nothing in your inquiry would indicate that the operation of a "sidewalk café" would violate this provision.

However, as set forth, the Department of Revenue has the exclusive authority to regulate the operation of all locations licensed to sell beer, wine or alcoholic liquors. While it does not appear that State statutes definitively exclude broadened areas, such as sidewalk areas, from being

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considered as licensed premises, it appears that it would be a matter for the Department of Revenue to determine whether such an area could be considered an extension of a business and, therefore, a licensed area. Therefore, it would appear appropriate for such broadened area to be described in any application if it is desired that alcoholic beverages be sold and served in that area. As to whether a liquor license can be extended to allow for such sales, I can only suggest that you contact the Department of Revenue for their guidance in such regard.

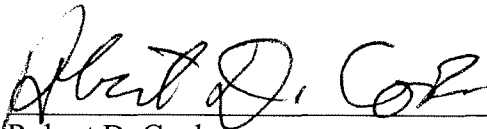
Very truly yours,

Henry McMaster
Attorney General



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