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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 18, 2001

James S. Gibson, Jr., Esquire
Beaufort County Attorney
Post Office Box 40
Beaufort, South Carolina 29901-0040

Re: Your Letter of January 23, 2001
Referendum for Sunday Alcohol Sales

Dear Mr. Gibson:

In the above referenced letter, you question the continued application of "Attorney General's Opinion No. 94-58 [Dated October 7, 1994] as it relates to the necessity of having two separate referendums in reference to the Sunday sale of alcoholic beverages." Your query is based on changes made to the relevant statutes by the General Assembly during its 1996 session. Specifically, you pose the following:

1. Does the legislation enacted in 1996 in Act 415 effective January 1, 1997, in any way effect the Attorney General's opinion as to the necessity to hold two referendums as it relates to the Sunday sale of alcoholic beverages?

2. Do the requirements of Section 61-6-2010(C)(2) mean that if two referendums are required the referendums are to be held at least forty-eight months apart?

As stated in the above cited Opinion, the primary objective of both the courts and this Office in construing any statute is to ascertain and effectuate legislative intent if it is at all possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in the statutes should be given their plain and ordinary meanings and applied literally in the absence of ambiguity. McCollum v. Snipes, 213 S.C. 254, 49 S.E.2d 12 (1948); Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977). Statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Jones v. South Carolina State Highway Dept., 247 S.C. 132, 146 S.E.2d 166 (1966).

In October of 1994, when Atty. Gen. Op. 94-58 was written, this Office relied in large part on the following language contained in Part II, § 55, Act No. 164 of 1993 (enacted but not codified):

Request Letter

> The special version of a retail beer and wine permit provided in Section 61-9-312 of the 1976 Code in subsection A, may be issued in counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180 only after the effective date of this section. In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180 as of the effective date of this section, county or municipal election commissions shall conduct a referendum upon petition, as provided in section 61-5-180, solely to determine if the special permits authorized in Section 61-9-312 are approved. If approved pursuant to the referendum provided in this subsection or pursuant to Section 61-5-180 after the effective date of this section, the special permits may be issued as provided in Section 61-9-312.

In 1996, the General Assembly again revised §61-4-510 [formerly §61-9-312] through Act 415 §1. Subsection (A) listed below and codified in §61-4-510 was enacted as was subsection (B) below, even though not codified:

> (A) In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-6-2010, in lieu of the retail permit fee required pursuant to Section 61-4-500, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-4-120, 61-4-130, and 61-4-140. The annual fee for this special retail permit is one thousand dollars.
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> (B) The special version of a retail beer and wine permit provided in subsection (A) may be issued in counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-6-2010 only after June 21, 1993. In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-6-2010 as of June 21, 1993, county or municipal election commissions must conduct a referendum upon petition, as provided in Section 61-6-2010, solely to determine if the special permits authorized in subsection (A) are approved. If approved pursuant to the referendum provided in this subsection or pursuant to Section 61-6-2010 after June 21, 1993, the special permits may be issued as provided in subsection (A).

As our 1994 opinion stated, it is clear that a prerequisite to the issuance of a special beer and wine permit under §61-4-510 is a successful referendum pursuant to §61-6-2010. It is further clear that if such a referendum pursuant to §61-6-2010 was held by a county or municipality on or before June 21, 1993, a second referendum must be held to determine if the special version of the beer and wine permit can be issued in that county or municipality. Relying on the language of Part II, § 55, Act No. 164 of 1993, our opinion in 1994 was that a second referendum was also required for the

special beer and wine permit even if the referendum pursuant to §61-6-2010 was held after June 21, 1993. It appears, however, that the General Assembly has, through Act 415 of 1996, clarified the situation concerning the issuance of special beer and wine permits in those counties or municipalities which have held or will hold the referendum pursuant to §61-6-2010 after June 21, 1993. It now seems clear that a successful referendum pursuant to §61-6-2010 held after June 21, 1993, would be sufficient to allow a county or municipality to issue the special beer and wine permits provided for in S.C. Code Ann. §61-4-510.[1] Additionally, as the South Carolina Department of Revenue is responsible for issuing the special permits and regulation of Title 61, I have spoken to that agency's Chief Counsel for Regulatory Litigation concerning this matter. Through Chief Counsel, the Department of Revenue has indicated its concurrence in the opinion expressed above.

Given the above conclusion, there is no need to address your second question.

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

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[1] It is well recognized that the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with legislative intent. Scheff v. Township of Maple Shade, 149 N.J. Super. 448, 374 A.2d 43 (1977). On the other hand, the General Assembly has on occasion acted swiftly in amending statutes following the issuance of an opinion by this Office. See ATTY. GEN. OP. (Dated January 10, 1990).