



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

September 17, 1999

Paul A. Sandifer, Director
South Carolina Department of Natural Resources
P.O. Box 167
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Mr. Sandifer:

Your opinion request has been forwarded to me for reply. You have informed this Office that the Department of Natural Resources (hereinafter "DNR") and the State Law Enforcement Division (hereinafter "SLED") "historically has interpreted the provisions of § 61-6-4710 as prohibiting the possession or consumption of alcoholic liquors on vessels while on the waters of this State. This has not included vessels which are being used as private residences." You indicate that questions have recently come up as to whether this is a correct interpretation of the statute.

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

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In reviewing a statute addressing alcohol, one must keep in mind that the Twenty-First Amendment of the United States Constitution cloaks the state with almost absolute power to prohibit or regulate alcoholic beverages. Op. Atty. Gen. dated December 9, 1998. The state and its regulatory agencies are accorded wide latitude in choosing the means to accomplish such prohibition or regulation. Id.

This Office will normally defer to the administrative interpretation of a statute so long as the interpretation is reasonable. Op. Atty. Gen. dated April 28, 1999. After reviewing S.C. Code Ann. § 61-6-4710, the states' broad grant of power in regards to alcohol, and the previously cited rules of statutory construction, I cannot say that the longstanding administrative interpretation of the statute is unreasonable. Accordingly, this Office will defer to the administrative interpretation of S.C. Code Ann. § 61-6-4710.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,



Paul M. Koch
Assistant Attorney General

Says it's a Crime?: Chevron Deference to Agency Interpretations of Regulatory Statutes that Create Criminal Liability, 58 U. Pitt. L. Rev. 1 (1996). In Babbitt v. Sweet Home Chapter of Communities for a Great Oregon, 515 U.S. 687 (1995), respondents argued that the rule of lenity (criminal statutes strictly construed in favor of defendant) foreclosed any deference to the agency's interpretation of a statute which included criminal penalties. In dismissing this argument, the United States Supreme Court stated "[w]e have never suggested that the rule of lenity should provide the standard for reviewing facial challenges to administrative regulations whenever the governing statute authorizes criminal enforcement."