

The State of South Carolina



Office of the Attorney General

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July 26, 1994

Captain Warren Gall
Uniform Division
City of Myrtle Beach Police Department
1101 Oak Street
Myrtle Beach, South Carolina 29577

Dear Captain Gall:

Referencing the "Lodging Establishment Act" adopted by the General Assembly in 1994, you have asked how this act would apply to guests of hotels, motels, or other lodging establishments who rent by the month. You asked whether such would become a landlord-tenant situation outside the scope of the Lodging Establishment Act.

The Lodging Establishment Act will add § 45-2-10 et seq. to the South Carolina Code of Laws, to govern the lawful use of lodging establishments and provide penalties, including restitution requirements, for violations thereof. New § 45-2-20 defines the term "lodging establishment" as

a hotel, motel, villa, condominium, inn, tourist court, tourist camp, campground, bed and breakfast, residence, or any place in which rooms, lodging, or sleeping accommodations are furnished to transients for a consideration[.]

The term "transient" is not defined in the new act. On its face, the new act appears to be quite broad in application.

The South Carolina Residential Landlord and Tenant Act is codified at S.C. Code Ann. § 27-40-10 et seq. Certain residential arrangements are excluded from governance of this act by § 27-40-120; among them is subsection (4), "transient occupancy in a hotel, motel, or other accommodations subject to the sales tax on accommodations as provided by § 12-36-920[.]" Section 12-36-920 provides for the levy of a sales tax equal to seven percent (7%) on the gross proceeds of rentals or charges for rooms, lodging, or sleeping

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accommodations which are furnished to transients for a consideration, as more fully described in the statute; however,

gross proceeds derived from the lease or rental of sleeping accommodations supplied to the same person for a period of ninety continuous days are not considered proceeds from transients.

If one rents or leases sleeping accommodations for a period of ninety (or more) consecutive days, such would not be considered transient, would not be subject to the accommodations tax, and could be governed by the Residential Landlord and Tenant Act.

If one is not considered transient and thus is governed by the Residential Landlord and Tenant Act, it would appear that the Lodging Establishment Act would not then apply, as such provision of lodging would not seem to be on a transient basis. To determine which act would apply to a given situation, it would appear to be necessary to determine whether an individual is a transient, i.e., whether that individual has entered into a rental or lease arrangement for ninety consecutive days with the particular establishment. Such determination will have to be made on a case-by-case basis.

We trust that this has provided the necessary clarification to the extent possible, as the Lodging Establishment Act is new and has not been construed by a court as of now. If additional clarification should be needed, we would ask that the Chief of Police forward that request to this Office.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

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