

The State of South Carolina



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February 6, 1995

The Honorable James R. Metts, Ed.D.
Sheriff, Lexington County
P. O. Box 639
Lexington, South Carolina 29071

Re: Informal Opinion

Dear Sheriff Metts:

Thank you for your letter requesting an opinion as to whether a dealer in precious metals who engages in business at a flea market could ever meet the requirements of permanency and be issued a permit pursuant to the South Carolina Code of Laws § 40-54-20 (Supp. 1993).

According to § 40-54-20, a dealer can obtain a permit to engage in the business of buying and selling precious metals only if he operates from a "permanent place of business." A permanent place of business is defined in § 40-54-10 as

a fixed premises either owned by the dealer or leased by him.
One year's lease is a presumption of permanency.

Further, § 40-54-20 provides that

no dealer shall operate upon public property nor from a vehicle, flea market, hotel room or similar temporary location.
(Emphasis added.)

Under the well established canons of statutory construction, "the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the [s]tatutes." Gambrell v. Travelers Insurance

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Co., 280 S.C. 69, 310 S.E.2d 814, 816 (1983); McMillen Feed Mills, Inc. v. Mayer, 265 S.C. 500, 220 S.E.2d 221 (1975). It is evident from the words used therein, taken in their ordinary and popular significance, that the legislature specifically intended to exclude leases at temporary locations from the presumption of permanency since a temporary location is not a permanent place of business.

Section 40-54-20 specifically addresses that a flea market, like a vehicle or hotel room, is a temporary location. "Laws giving specific treatment to a given situation take precedence over general laws on the subject . . ." Duke Power Co. v. S.C. Public Service Comm'n., 284 S.C. 81, 326 S.E.2d 395, 399 (1985); Langley v. Pierce, 438 S.E.2d 242 (S.C. 1993); see also, Ramsey v. County of McCormick, 412 S.E.2d 408 (S.C. 1991) ("Where one statute deals with a subject in general terms, and another with a portion of the same subject in a more specific and definite way, the special statute will be given effect.") Based on these authorities, it is our informal opinion that the legislature made clear that regardless of the length of time a dealer leases from a temporary location, a permit will not be issued. Moreover, the presumption of permanency arises only when a dealer leases from a permanent place of business - a fixed premises, not when he leases from a temporary location.

Again, thank you for your letter. I trust you will find the above information to be helpful. If I can be of assistance to you in the future, or if a formal opinion is required, please do not hesitate to contact me.

Sincerely,



Zeb C. Williams, III
Deputy Attorney General

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