

5038/5718



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 17, 1995

Ms. Charlotte Grassmann
Business License Administrator
Finance Department
City of Beaufort
P. O. Drawer 1167
Beaufort, South Carolina 29901-1167

Informal Opinion

Dear Ms. Grassmann:

You have noted that "[w]e have the Red Dot/ABC Stores which sell alcoholic beverages and with the appropriate dividers they also sell beer and wine. Then we have the party store which only sells beer and wine." You ask the following question:

[c]an we, the municipality require the Red Dot/ABC Store to carry a local business (privilege) license for revenue generated from beer and wine sales? Can we require a party store selling only beer and wine to carry a local business license?

I am enclosing for your information Opinion No. 82-28 (April 22, 1982) which addressed the issue whether "Marion County [may] impose a business license tax on the sale of beer, wine and alcoholic beverages?" The Opinion noted that Section 4-9-30 authorizes counties to impose a business license tax graduated to gross income but subject to the general law of this State. This provision has its equivalent for municipalities at Section 5-7-30. See, Crenco Food Stores, Inc. v. The City of Lancaster, South Carolina, ___ S.C. ___, 457 S.E.2d 338 (1995).

Ms. Charlotte Grassmann
Page 2
October 17, 1995

The Opinion further noted that the general law of the State imposes restrictions upon the power of a county to impose taxes on beer, wine, and alcoholic beverages. We cited to Section 12-21-1080 which provides as follows:

'Except as provided in Secs. 12-21-1310 to 12-21-1350, the taxes provided for in this article shall be in lieu of all other taxes and licenses on beer and wine of the State, the county or the municipality and shall include licenses for its delivery by the wholesaler.'

Also cited was Section 12-33-20 which states:

'The license and excise taxes provided in the chapter [33] for the privilege of engaging in the business or manufacturing and selling alcoholic liquors shall be in lieu of all other taxes and licenses, State, county and municipal, except property, State income and corporation license taxes.'

Accordingly, concluded the Opinion,

[b]ased on these statutes a county is prohibited from imposing a business license tax on beer, wine and alcoholic beverages. This conclusion is consistent with the opinion of this office in 1966-67 OAG No. 2229, p.27 dealing with the powers of municipalities. [also enclosed]

The foregoing Opinion has not been altered or amended by this Office and has not been changed by the General Assembly. Accord, Crenco, supra [municipality may not impose business license tax on video poker revenues because it conflicts with general law]. Thus, it is presumed to be correct. Op. Atty. Gen., January 21, 1992 [the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views therein were consistent with the legislative intent.] Legislative amendment would thus be the municipality's remedy if it chooses to seek it.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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.

Ms. Charlotte Grassmann
Page 3
October 17, 1995

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to be 'RDC', written in a cursive style.

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph
Enclosure