

The State of South Carolina



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May 25, 1993

The Honorable Michael T. Rose
Senator, District No. 38
506 Gressette Building
Columbia, South Carolina 29202

Dear Senator Rose:

You forwarded a letter from John Polito which raised the following questions:

(1) If a sales clerk of a retail business, properly licensed to legally sell beer and wine, sells beer to an underage individual (less than 21), has the employee made a "transfer" or "give[n]" as those words are used in S.C. Code Section 61-13-287?

(2) May law enforcement agencies employ or utilize underage individuals (less than 21) to cause "transfers" to be made by sales clerks of lawfully licensed beer and wine retail businesses?

Section 61-13-287 states in part

It is unlawful for a person to transfer or give to any person under the age of twenty-one years for the purpose of consumption any beer, wine or alcoholic liquor at any place within the State.

Pursuant to S.C. Code Section 56-1-746, the driver's license of any person convicted of violating Section 61-13-287 shall be suspended for a ninety day period.

The Honorable Michael T. Rose
Page 2
May 25, 1993

As was referenced in Mr. Polito's letter, S.C. Code Section 61-9-40 specifically provides that it is unlawful "to sell" beer to an individual under twenty-one years of age. In 1983, the General Assembly enacted legislation, S.C. Code Section 61-9-85, which provides that if a person is charged with a violation of Section 61-9-40, the minor to whom the beer or wine is sold must be charged with a violation of S.C. Code Section 20-7-370, the unlawful purchase or possession of beer or wine.

The term "transfer" as used in Section 61-13-287 is not expressly defined. Neither is the term "sell" as used in Section 61-9-40 defined.¹ Legislative clarification would be advantageous to resolve any ambiguity. However, according to Mr. Polito's letter and my telephone conversation with him, local law enforcement and the Alcoholic Beverage Control Commission has interpreted "transfer" to include "sales" to a person under twenty-one. Generally, the interpretation of a statute by those charged with its enforcement "... is entitled to the most respectful consideration and should not be overruled absent compelling reasons." Emerson Electric Co. v. Wasson, 287 S.C. 394 at 397, 339 S.E.2d 118 (1986). See also: William C. Logan and Associates v. Leatherman, 290 S.C. 400, 351 S.E.2d 146 (1986); Faile v. S.C. Employment Security Commission, 267 S.C. 536, 230 S.E.2d 219 (1976).

According to Black's Law Dictionary, 6th Edition, the term "transfer" is defined as

to convey or remove from one place, person, etc. to another;
pass or hand over from one to another; specifically, to change
over the possession or control of ... to sell or give. (emphasis
added)

In Fairlawn Plaza Development, Inc. v. Fleming Co. Inc., 502 P.2d 663 (Kan. 1972) the Kansas Supreme Court recognized

... in common usage the word "transfer" includes "sale" --
while transfer includes conveyance of property other than by

¹States regulating alcoholic beverages in other states have defined the term "sale" or "sell" for purposes of such statutes as a "transfer" of alcoholic beverages for a consideration. See: Opin. of the Nebraska Attorney General No. 92075 dated June 3, 1992, In re GTRT Inc., 467 A.2d 1233 (Pa. 1983), Department of Business Regulation v. Cost Plus Imports, 513 So.2d 763 (Fla. 1987) which referenced statutes in Nebraska, Pennsylvania and Florida.

The Honorable Michael T. Rose
Page 3
May 25, 1993

sale, there is no circumstance wherein a sale would not be a transfer.

See also: 77 C.J.S. Sales, Section 2, pp. 583-584 ("the word 'transfer' is more comprehensive than the word 'sale,' and may involve a mode of disposing and parting with property other than by sale"); 87 C.J.S. Transfer, pp. 892-895 (... "When all technicality and narrowness of meaning is precluded, and the word 'transfer' is used in its most comprehensive senses, it is intended to include every means and manner by which property can pass from the ownership and possession of another ... including all transactions whereby property of one person becomes that of another, whether by descent or purchase")

Referencing the above, it appears that the "sale" of beer or wine to an underage individual could constitute a "transfer" for purposes of Section 61-13-287. A 1975 opinion of this Office, number 3946 concluded that it does not constitute entrapment for a law enforcement officer to instruct a minor to request the purchase of beer and then to arrest the seller following the illegal sale. Therefore, it appears that law enforcement officers could utilize underage individuals to cause "transfers" prohibited by Section 61-13-287.

With kind regards, I am

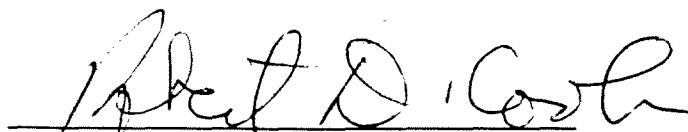
Very truly yours,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



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