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The State of South Carolina



Office of the Attorney General

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October 7, 1994

The Honorable Thomas G. Keegan
Member, House of Representatives
6632 West Sweetbriar Trail
Surfside Beach, South Carolina 29575

Dear Representative Keegan:

You have requested the opinion of this Office concerning S.C. Code Ann. § 61-9-312, which Code section allows for issuance of special permits for Sunday sales of beer and wine for off-premise consumption in those counties or municipalities which have adopted § 61-5-180. Section 61-9-312 was adopted by the General Assembly in 1993 with restrictions which required a referendum prior to issuance of the permits in counties or municipalities. A question has arisen as to whether, after the effective date of § 61-9-312, a referendum conducted pursuant to § 61-5-180 (concerning local option permits for "mini-bottles") must also include a vote on § 61-9-312. If a referendum as to Sunday "mini-bottle" sales must include a question as to Sunday sale of beer and wine for off-premise consumption, the question is asked as to whether separate ballots are required or whether a single question covers both types of sales.

Background

Prior to the enactment of § 61-9-312 in 1993, a statutory means was already in place for counties or municipalities, by petition and referendum, to opt for issuance of temporary permits for the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less. Such permits would be valid for a period not to exceed twenty-four hours and would be issued only to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for such sales.

To opt for such local option temporary permits, a county or municipality would be petitioned by the requisite number of electors, whereupon a referendum would be called

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and notice provided to the electorate. The question to be placed on the ballot must read substantially as stated in § 61-5-180, which is as follows:

"Shall the South Carolina Department of Revenue and Taxation be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for sales"?

If a majority of the qualified electors in the county or municipality vote in favor of the referendum, then permits authorized by § 61-5-180 may be issued.

We have been advised that during the past several months, a petition has been circulated in Horry County toward holding such a referendum. The petitioners posed this referendum question:

"Shall the South Carolina Department of Revenue and Taxation be authorized to issue temporary permits in Horry County for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for sales?"

We observe that the question "substantially complies" with the language required by § 61-5-180. We understand that sufficient signatures have been certified so that the question may be presented to the electors in the general election next month.

Section 61-9-312

Section 61-9-312 was adopted by the General Assembly as part of the 1993-94 Appropriation Act, Part II, § 55, Act No. 164 of 1993. Subsection A of that section is codified as § 61-9-312:

In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180, in lieu of the retail permit fee required pursuant to Section 61-9-310, a retail dealer otherwise eligible for the retail permit

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under that section may elect to apply for a special version of that permit which allows sales for off-premise consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-9-90, 61-9-100, 61-9-110, and 61-9-130. ... [Emphasis added.]

Not codified but equally important, subsection C of that part of the Appropriations Act provides:

The special version of a retail beer and wine permit provided in Section 61-9-312 of the 1976 Code in subsection A, may be issued in counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180 only after the effective date of this section. In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180 as of the effective date of this section, county or municipal election commissions shall conduct a referendum upon petition, as provided in section 61-5-180, solely to determine if the special permits authorized in Section 61-9-312 are approved. If approved pursuant to the referendum provided in this subsection or pursuant to Section 61-5-180 after the effective date of this section, the special permits may be issued as provided in Section 61-9-312.

The effective date of these provisions was June 21, 1993.

Discussion

The primary objective of both the courts and this Office in construing any statute is to ascertain and effectuate legislative intent if it is at all possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in the statutes should be given their plain and ordinary meanings and applied literally in the absence of ambiguity. McCollum v. Snipes, 213 S.C. 254, 49 S.E.2d 12 (1948); Green v. Zimmerman, 269 S.C. 535, 238 S.E.2d 323 (1977). Statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Jones v. South Carolina State Highway Dept., 247 S.C. 132, 146 S.E.2d 166 (1966). A construction which avoids absurd results is favored. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

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Two different situations must be addressed with respect to Part II, § 55, supra. The first situation exists in those counties or municipalities which have had a favorable referendum pursuant to § 61-5-180 as to temporary permits to sell "mini-bottles" prior to June 21, 1993, the effective date of the above act. These localities are not required to have a new referendum as to "mini-bottles," but a referendum as to sales of beer and wine for off-premise consumption, as specified in § 61-9-312, is required if the petition as described in § 61-5-180 is presented to the appropriate election commission. It is our view that reference to § 61-5-180 with regard to licenses or permits to sell beer or wine evidences a legislative intent that the petition, notice, and referendum requirements therein would be required to be followed, changing phraseology as is necessary. The first phrase of § 61-9-312, as emphasized above, has been complied with in these localities because temporary permits for the sale of "mini-bottles" have already been authorized to be issued pursuant to § 61-5-180. The electorate has a chance to speak twice on these very different issues, alcoholic liquors in the specified settings for on-premise possession, sale, and consumption, versus sales of beer and wine in retail establishments for off-premise consumption on Sundays.

The second situation is presented by those counties or municipalities which had not had a favorable referendum by June 21, 1993, as to the possession, sale, and consumption of "mini-bottles." The language of § 61-9-312 emphasized above seems to create a condition precedent to holding a referendum as to the sale of beer and wine on Sunday, as it reads, "In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180" (Emphasis added.) The plain language seems to indicate that before a referendum as to the sale of beer and wine as specified in § 61-9-312, there must have been a successful referendum as to the possession, sale, and consumption of "mini-bottles" pursuant to § 61-5-180. It would create an absurd or anomalous result if referenda were held simultaneously for alcoholic liquors ("mini-bottles") and for beer and wine, as the referendum for the former could fail while the referendum for the latter might be successful, though the results could not be implemented because the temporary permits would not have been authorized (as to alcoholic liquors) pursuant to § 61-5-180.

Such an interpretation would permit an equitable result to be reached, as well. Localities not having had a favorable referendum pursuant to § 61-5-180 would be placed on an equal footing with those localities having had a favorable referendum prior to June 21, 1993, in that they could consider the on-premise alcoholic liquor issue separate and apart from the off-premise beer and wine issue.

Other concerns are presented, as well. We question whether § 61-5-180's "substantiality" requirement would be met by combining the two very disparate issues on

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the same ballot, either in one question or in separate questions, particularly in light of the first phrase of § 61-9-312 emphasized above. Moreover, to require voters to vote on the beer and wine issue on the basis of the petition as described above would appear to violate § 61-5-180 as the petition did not include the beer and wine issue; no signatures were collected as to that issue. In addition, having the electorate vote on both issues as a result of the above-described petition would effectively result in the amendment of the petition after its submission and certification. As is stated in 42 Am.Jur.2d Initiative and Referendum § 26, "[o]fficers having charge of the machinery for bringing ... [a] petition to a vote of the electors cannot alter the petition."

Conclusion

For the reasons stated above, it is the opinion of this Office that in those counties or municipalities which have not had a favorable referendum pursuant to § 61-5-180 prior to June 21, 1993, a referendum pursuant to § 61-9-312 should not be conducted unless and until a favorable referendum is had pursuant to § 61-5-180. The two issues presented by these two statutes should not be combined as a single referendum question or as two questions to be voted on at the same election. In the instance in which, as here, a petition was presented only as to the "mini-bottle" issue, those in charge of the ballot preparation should not effectively amend the petition after the fact by wording the ballot to include an issue (beer and wine) not presented by the petition, especially in light of the conclusions previously reached.

With kindest regards, I am

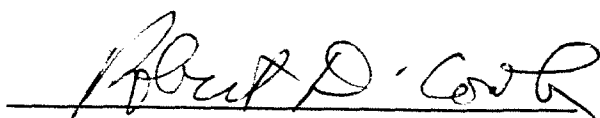
Sincerely,



Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions