



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

June 26, 1996

The Honorable Greg Smith  
Senator, District No. 34  
Post Office Box 1231  
Pawleys Island, South Carolina 29585

Re: Informal Opinion

Dear Senator Smith:

You have asked "whether it is within the law, especially in light of the South Carolina Lodging Establishment Act of 1994 ... for resort rental management companies to decline rentals to 'house parties.'" Specifically, you wish to know whether "there is any law against renting to groups primarily of unrelated young people under the age of 25." In addition, you ask whether "it is within the law for a resort rental management company to require a security deposit for each minor guest under 18 in a group reserving a rental property."

Law/Analysis

The "Lodging Establishment Act of 1994" is codified at S.C. Code Ann. Sec. 45-2-10 et seq. Section 45-2-30 permits a "lodging establishment", as defined by Section 45-2-20(2) [which furnishes accommodations to transients for a consideration] to "refuse or deny any accommodations, facilities or privileges of a lodging establishment" to certain persons. Among those who may be denied accommodations pursuant to the Act is a "person who is visibly intoxicated or who is disorderly so as to create a public nuisance." Section 45-2-30(A)(2). Moreover, Subsection (A)(3) authorizes the innkeeper to refuse to provide accommodations to

... [a] person whom the innkeeper reasonably believes is seeking accommodations for any unlawful purpose, including

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the unlawful possession or use of controlled substances in violation of Chapter 53 of Title 44 or the use of the premises for the consumption of beer, wine or alcoholic liquors by a person under the age of twenty-one years in violation of Sections 20-7-370 or 20-7-380.

The statute further exempts from civil or criminal liability an innkeeper who denies accommodations for the above or other specified reasons, but also makes clear that the innkeeper may not discriminate in offering accommodations "based upon a person's race, creed, color, national origin, gender, disability or marital status."

Section 45-2-40 makes criminal a variety of activities occurring on the property of a lodging establishment as defined. Section 45-2-40(c) states that

... [a] person who rents or leases a room in a lodging establishment for the purpose of allowing the room to be used by another to do any act enumerated in subsections (A) or (B) of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

Section 45-2-40(A)(1) and (2) further provide that

- (A) A person who on the premises or property of a lodging establishment:
  - (1) Uses or possesses a controlled substance in violation of Chapter 53 of Title 44;
  - (2) consumes or possesses beer, wine or alcoholic liquor in violation of Sections 20-7-370 or 20-7-380; is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than thirty days.

In addition, Section 45-2-60 permits the innkeeper to eject a person from the premises of a lodging establishment for these same reasons as specified above. Finally, Section 45-2-80 specifically provides that

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[n]othing in this chapter prohibits an innkeeper from denying accommodations to a guest or ejecting a guest for any valid nondiscriminatory reason not provided in this chapter.

A number of principles of statutory construction are relevant here. First and foremost, is the tenet that in interpreting a statute, the primary purpose is to ascertain the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Comm., 273 S.C. 269, 255 S.E.2d 837 (1979). In any statute, that which is fairly implied is as effective as if expressed. Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1938). Full effect must be given to each section of a statute, words therein must be given their plain meaning, and phrases must not be added or taken away in absence of ambiguity. Hartford Acc. & Indem. Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979). A statute is not deemed to alter a common law right or remedy unless the Legislature's intent to do so is clear and statutes which purport to alter the common law are to be strictly construed. Crowder v. Carroll, 251 S.C. 192, 161 S.E.2d 235 (1968).

Here, the General Assembly's intent in enacting the Lodging Establishment Act of 1994 is clearly to enable the innkeeper to exclude from the lodging establishment premises certain individuals, including those who are intoxicated or disorderly and thereby creating a public nuisance, as well as those who may be in possession of controlled substances or persons under 21 unlawfully in possession of alcoholic beverages. While those who sponsor or attend "house parties" are not mentioned per se, certainly, an innkeeper is empowered through the foregoing authority, to also inquire and determine whether these type persons will be present or these type events will occur if he leases the premises to a particular individual or individuals. Within the innkeeper's right to exclude certain persons who may disturb his other guests or break the law is clearly the authority to reasonably inquire and form an opinion that such conduct will occur upon providing accommodations to certain persons.

This legislative intent is consistent with the common law duty of an innkeeper to protect the peace and quiet as well as the safety of his guests. While it is well-recognized under the common law that an innkeeper has a general duty to accommodate all persons, without discrimination, nevertheless, he

... may properly refuse to receive and entertain a proposed guest when his accommodations are exhausted, or where the guest is not able and willing to pay the price required. Furthermore, refusal may be grounded on the fact that he is

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not in a fit condition to be received, as where he is drunk or disorderly, or otherwise obnoxious, or where the service to the guest would be offensive to other customers and would injure the business.

43A C.J.S., Inns, Hotels, Etc., § 14. Moreover, an innkeeper

may properly refuse to accommodate drunk and disorderly persons, persons of suspicious or immoral character or of "bad reputation" generally or persons so objectionable to the guests of the inn that it would injure the innkeeper's business to admit them.

40 Am.Jur.2d, Hotels, Motels, Etc. § 65. Further, it is recognized that

... a person who is not a guest and has no intention of becoming one has, in general, no legal right to enter or remain in the hotel against the will of the innkeeper, and is under a duty to leave peaceably when ordered to do so by the innkeeper. Those who enter a hotel or inn intent on some pleasure or profit to be derived from intercourse with its guests, are there, not of right, but under an implied license that the innkeeper can revoke at any time. Clearly, the innkeeper may refuse to accept those persons who by reason of their conduct, character or physical condition are obnoxious, or who intend to injure his business.

The Louisiana case of Kramer v. Continental Cas. Co., 641 So.2d 557 (La.App.3d Cir. 1994) addressed the duty of an innkeeper in this regard. The facts of the case dealt with the question of an innkeeper's duty in terms of allowing so-called "house parties" involving underage drinkers to be held on its premises and thus is particularly instructive as to your question. In Kramer, the Downtowner Motor Inn rented two rooms to high school boys on New Years Eve, 1987. Apparently, it was common knowledge among teenagers that the Downtowner would rent rooms to those who were underage for the purpose of partying and consuming alcoholic beverages. Other teenagers had pooled their money and also participated in the party. Testimony was to the effect that there was somewhere between fifteen and fifty students present at one time or another. They brought in and consumed large quantities of alcoholic beverages.

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The Downtowner used off-duty sheriff's deputies to police the premises. Responding to complaints from other occupants, the officers observed persons underage in the possession of alcoholic beverages in violation of state law. Accompanied by the manager of the hotel lounge, the deputies dispersed all unregistered guests. It had been raining that evening and subsequently one of the teenagers dispersed was severely injured in an automobile accident. Her parents sued, among others, the Downtowner motel for negligence in letting the individuals leave the premises knowing they had consumed alcoholic beverages. Following a jury trial, the jury determined that the Downtowner and the off-duty deputies were free from fault.

On appeal, however, the Court reversed the jury's verdict as to the Downtowner's liability. After reviewing all the evidence, the Court concluded that

... the jury was manifestly erroneous in its determination that the Downtowner was not negligent. If hired security guards, off-duty police officers, who were well aware of the laws of Louisiana and who, despite knowledge of the minors' drinking of alcoholic beverages, negligently chose to have them drive from the premises. As employer of these security guards, the Downtowner is liable for the damages Shannon and her parents suffered as a result of that negligence. ... As elaborated upon earlier, the Downtowner clearly breached each of the duties found herein, and ultimately Shannon suffered injuries which were, at least in part, the direct result of its dereliction of the duties detailed hereinabove.

641 So.2d at 570-571. In the opinion, the Court also chastised the Downtowner for allowing these "parties" on its premises:

[a]t this point, we find it appropriate to state that we do not impose any form of strict liability upon innkeepers; nor do we impose a duty upon them to investigate or search a patron's room. However, we cannot condone a motel proprietor who blatantly ignores the law and allows youths who are obviously under age and obviously drinking alcoholic beverages to use its premises for those very purposes. This conduct is reprehensible and challenges the law and the courts to check blameworthy conduct of responsible adults. The Downtowner cannot escape legal responsibility for the glaring breaches which are detailed in the record. We hasten to add



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that this is especially true in this case where local under age teenagers have routinely rented motel rooms there for parties because the teenagers were too young to patronize barrooms. Under the facts of this case, the Downtowner should have reasonably foreseen that injuries could be caused by an alcohol related accident by a minor, who was allowed to drink and become intoxicated on its premises with its knowledge, and who was forced to drive in that condition by the Downtowner.

641 So.2d at 571. What the Court was saying obviously, was that the Downtowner had acted negligently by allowing underage persons to possess and consume alcoholic beverages on its premises.<sup>1</sup> Not only did the Court believe that the motel could refuse accommodations to a "house party" where it believed minors would be present with alcoholic beverages on its premises, but the Court was incensed that the motel did not do so.

The general law of negligence in South Carolina is consistent with Kramer. It is well-settled that an innkeeper must provide reasonable protection for his guests against injuries from the criminal acts of third persons. Courtney v. Remler, 566 F.Supp. 1225 (D.S.C. 1983), affd. 745 F.2d 50 (4th Cir. 1984). And as our Court of Appeals stated in Daniel v. Days Inn of Amer., 292 S.C. 291, 365 S.E.2d 129, 132 (1987),

[a]lthough a proprietor of a hotel is not an insurer of the safety of his guests against improper acts of other guests or third persons, he is found to exercise reasonable care in this respect for their safety and may be held liable on grounds of negligence for failure to do so. 40 Am.Jur.2d, Hotels, Motels and Restaurants, § 111 (1968).

See also, Darter v. Grville. Comm. Hotel Corp. 301 F.2d 70 (4th Cir. 1962); Bowling v. Lewis, 261 F.2d 311 (4th Cir. 1959); Cramer v. Balcor Prop. Mgmt, Inc., 312 S.C. 440,

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<sup>1</sup>See also, Christiansen v. Campbell, 285 S.C. 164, 328 S.E.2d 351 (1985), where the Court of Appeals concluded that a bar owner may be liable under certain circumstances for negligently allowing a person to go out intoxicated.

441, S.E.2d 317 (1994).<sup>2</sup> Thus, an innkeeper has an obligation and duty to protect his guests not only from physical harm, but from disturbance of their peace and tranquility. As the North Carolina Supreme Court stated, an innkeeper is "bound to exclude from his premises all disorderly persons, and all persons not conforming to regulations necessary and proper to secure such quiet and good order." State v. Steele, 11 S.E. 478 (N.C. 1890).

You particularly reference Section 45-2-30(c)(ii) with respect to the question as to whether it is "within the law for a resort rental management company to require a security deposit for each minor guest under 18 in a group reserving rental property." It is not clear whether or not each of the minors who may attend the "house party" will actually be a registered guest of the lodging establishment or some of these persons are simply invitees of registered guests. Section 45-2-30(A) of the Lodging Establishment Act provides:

- (A) An innkeeper may refuse or deny any accommodations, facilities or privileges of a lodging establishment to:
  - (1) A person who is unwilling or unable to pay for accommodations and services of the lodging establishment. The innkeeper may require the prospective guest to demonstrate his ability to pay by cash, valid credit card, or a validated check. The innkeeper may require a parent of a minor:
    - (a) to accept in writing liability of the guest room costs, taxes, all charges by the minor, and any damages to the guest room or its furnishings caused by the minor while a guest at the lodging establishment; and
    - (b) to provide the innkeeper with a valid credit card number to cover the guest room costs, taxes, charges by the minor, and any damages to the guest room or its furnishings caused by the minor; or

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<sup>2</sup>In Balcor, the Court distinguished the landlord-tenant relationship from that of an innkeeper-guest or store-invitee and found no duty either at common law or pursuant to the Landlord-Tenant Act on the part of the landlord to protect his tenant from the criminal act of a third person.

(c) if the credit card is not an option, give the innkeeper:

(i) an advance cash payment to cover the guest room costs and taxes for all room nights reserved for the minor; plus

(ii) a one hundred dollar cash deposit towards the payment of any charges by the minor or any damages to the guest room or its furnishings which must be refunded to the extent not used to cover any such charges or any damages as determined by the innkeeper following room inspections at check-out. (emphasis added).

Based upon the foregoing provisions, it is evident that the General Assembly's intent was to mandate that where a minor is "a guest at a lodging establishment" or a "prospective guest" thereof, an innkeeper may require that the minor's parent insure payment for the minor (including any damages to the room) through the mechanisms set forth in the statute. If such financial security is not forthcoming, accommodations for the minor at the lodging establishment may be denied. Certainly therefore, with respect to any minor who is a guest at the lodging establishment where a "house party" will be held (i.e. where a room will be rented for that minor), the parent of that minor may be required by the innkeeper to put up a security deposit, as provided in the Act. If rooms are procured for all minors attending the party, in each and every instance, the parent of the minor may be required to provide security for payment in the manner in which the Lodging Establishment Act so states. If such conditions are not met, the Act authorizes the innkeeper to deny accommodations to the minor.

I presume that there is implied from your question also the issue of those minors or other persons who attend the "house party" not as "guests" at the "lodging establishment", but instead as invitees of those persons who are guests. It is well-recognized that

[a]s a rule, an innkeeper gives a general license to all persons to enter his premises, and hence it is not a trespass for one to enter an inn without a previous actual invitation. However, where a person enters a hotel or inn, not as a guest but intent on pleasure or profit to be derived from interaction with its guests, he is there under an implied license that may be



revoked by the innkeeper at any time. Accordingly, a person who is not a guest has, in general, no legal right to enter or remain in an inn against the will of an innkeeper, and it has been held that were a person has entered a public inn and his presence is disapproved, he may be lawfully ejected by the innkeeper with the use of as much force as is reasonably necessary if he refuses to leave on request.

In the absence of a regulation or agreement to the contrary, and under such reasonable restrictions and regulations as the management may impose, a guest of a hotel may, as a matter of right, invite unobjectionable persons to visit him at the hotel for lawful purposes and at lawful times and they have a right to remain in the hotel. (emphasis added).

43A C.J.S., Inns, Hotels, Etc., § 16. As was stated by the North Carolina Supreme Court in Money v. Travelers Hotel Co., 174 N.C. 508, 93 S.E. 964, 965-6 (1917),

[t]he deceased, according to the evidence of the plaintiff, was on the premises of the defendant by the invitation of Patterson, a guest of the hotel, for social purposes, and as such he was under an implied license, revocable at the will of the proprietor of the hotel.

Section 45-2-80 of the Lodging Establishment Act expressly provides that "[n]othing in this chapter prohibits an innkeeper from denying accommodations to a guest or ejecting a guest from any valid nondiscriminatory reason not otherwise provided in this chapter." Moreover, it does not appear that the common law authority of an innkeeper has been altered or revoked by the Act. In my view, because the common law authority of an innkeeper gives him virtually unrestrained authority to deny access to an invitee of a guest, the innkeeper could, within the limits of such authority, also set reasonable conditions for the invitee of the guest to be on the premises, including providing security to the innkeeper for any costs or damages incurred or requiring a reasonable charge for invitees to come onto his premises. The power to exclude altogether would undoubtedly include the authority to impose reasonable conditions for entry upon the premises.

In summary, it is my opinion that the innkeeper or manager of a hotel or motel possesses the authority, pursuant to the Lodging Establishment Act, as well as the common law to deny access to a "house party" to be held on his premises, particularly where such will result in persons underage unlawfully possessing alcoholic beverages or

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there is the possibility of other laws being broken. An innkeeper does not have to wait until after-the-fact to prevent disturbances or violations of the law which may occur on his premises. He has a duty and obligation to his other guests to see that their safety is protected and their peace and quiet is maintained. Moreover, the Lodging Establishment Act authorizes an innkeeper to require security from the parents of every minor who will be a "prospective guest" of the lodging establishment. The parents of every minor who is a "guest at the lodging establishment" may be required to secure payment for the room charges and any damages to the guest room or its furnishings caused by the minor, and if such security is not provided by the parent, the innkeeper may deny accommodations to the minor. Finally, an innkeeper has also, in my judgment, the right to impose reasonable charges or reasonable security for any invitee of a guest coming onto the premises of his lodging establishment. The Act authorizes the innkeeper to deny accommodations to a guest for any valid nondiscriminatory reason and the common law gives an innkeeper broad authority to deny access to an invitee of any guest. That being the case, it would appear to me that the innkeeper could also impose reasonable conditions for an invitee of a guest to come upon his premises or, if he chose, to deny access altogether to his premises by such invitee of a guest.

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.

With kind regards, I am

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

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