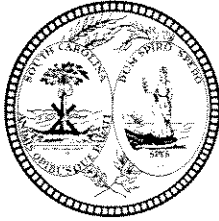


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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 7, 1996

R. Scott Sprouse, Esquire
Westminster City Attorney
P. O. Box 99
Seneca, South Carolina 29679-0099

Re: Informal Opinion

Dear Mr. Sprouse:

You have asked our advice with respect to the following questions:

1. Does a private club, which is operated for a profit by the owner and sells membership to the general public, qualify as a "nonprofit organization" under S.C. Code Ann. Section 61-5-20(3)?
2. It is legal for a municipality to regulate the hours of an establishment if it does not fall under the "nonprofit organization" provision of S.C. Code Ann. Section 61-5-20(3)?
3. Is it legal for a municipality to require establishments to ensure that patrons vacate the premises after closing time?

S.C. Code Ann. Sec. 61-5-20(3) provides as follows:

[n]onprofit organizations with limited membership, not open to the general public, established for social benevolent, patriotic, recreational, or fraternal purposes may be licensed to

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sell alcoholic liquors and beverages in sealed containers of two ounces or less. Members or guests of members of such organizations may consume alcoholic liquors and beverages sold in such containers upon the premises between the hours of ten o'clock in the morning and two o'clock on the following morning.

Whether or not the club is "operated for a profit" is, of course, a factual question which is beyond the scope of an opinion of this Office. Op. Atty. Gen., December 12, 1983. However, the statute on its face requires that the organization be "nonprofit" for it to apply, and assuming as you state that the club operates "for profit", Section 61-5-20(3) would not be applicable.

Moreover, we have also advised that organizations "regularly open to the general public would not qualify for a sale and consumption license pursuant to the requirements of Sec. 61-5-20(3)" Op. Atty. Gen., July 2, 1982. Again, assuming that the club in question sells membership to the general public, it is very questionable as to the applicability of this statutory provision.

Assuming that Section 61-5-20(3) is not applicable, as to your second question, it is also answered by prior opinions of this Office. I am enclosing copies of Op. No. 84-101 (August 22, 1984) and Op. Atty. Gen., May 21, 1987. The 1984 opinion concludes that "[t]his office has consistently opined that the state has preempted the field with regard to the regulation of 'alcoholic liquors', and thus local governing bodies are prohibited from regulating the hours alcoholic liquors may be sold." The opinion further concluded that "Sec. 33, Part II of Act 512 of 1984 preempts the area of regulation of the hours beer and wine may be sold and thus counties may not restrict by local ordinances these hours." Sec. 33, Part II of Act 512 of 1984 is now codified at Sec. 61-5-190 and states that the Department of Revenue "is the sole and exclusive authority empowered to regulate the operation of all retail locations authorized to sell beer, wine or alcoholic beverages ...". Moreover, the opinion, dated May 21, 1987, cited the 1984 opinion and concluded that the predecessor proviso to this Code Section also preempted municipalities from regulating "by local ordinance the hours beer and wine may be sold." In view of the fact that Section 61-5-190 is still on the books, it would appear that these earlier opinions still apply and counties and municipalities are precluded from regulating the hours establishments may operate which sell alcoholic beverages.

A case decided by our Supreme Court, Town of Hilton Head Island v. Fine Liquors, Ltd., 302 S.C. 550, 397 S.E.2d 662 (1990) addressed the impact of Section 61-5-190 upon municipal ordinances. There, the Town of Hilton Head adopted an ordinance

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which prohibited Fine Liquors from using four internally lit "red dot" signs at its business. The ordinance applied to prohibited internally illuminated signs which are visible from any public right of way or beach. Said the Court,

[w]e do not interpret the language of the statute as diminishing the power conferred upon local governments to regulate land use. The Town Ordinance is part of the Town of Hilton Head Land Island Management Ordinance and is thus clearly a land use ordinance. We agree with the other jurisdictions that have addressed this issue and have determined that in order to preempt an entire field, an act must make manifest a legislative intent that no other enactment may touch upon the subject in any way.

Unlike Fine Liquors, where the regulation was deemed only to "touch upon the subject" of Section 61-5-190, the Town's proposed ordinance seeks to regulate the hours of establishments licensed to sell alcoholic beverages for consumption on premises. Such substantial regulation of alcoholic beverages has been deemed preempted by a number of cases in other jurisdictions. People v. DeJesus, 446 N.Y.S.2d 207, 430 N.E.2d 1260 [hours]; In re Lansdown Ent. Corp. v. N.Y.C. Dept. of Consumer Affairs, 530 N.Y.S.2d 574 (1988) [hours]; Dallas Merchants v. City of Dallas, 852 S.W.2d 489 (Tex. 1993) [ordinance prohibiting sale within 300 ft. of residential area deemed preempted by state law].

The 1984 Opinion made it clear that the hours of operation of an establishment fell squarely within the scope of Section 61-5-190. As was stated,

[w]hile we caution that we do not here attempt to define the limits of the statute's total occupational preemption of this subject area, most clearly the hours a beer and wine outlet may sell such beverages comes within this exclusive authority 'to regulate the operation' of an outlet.

State law also provides specifically for on-premise consumption of beer and wine during certain hours in Section 61-9-100; liquor is regulated for on-premise consumption by Section 61-5-20.

As to your question regarding whether it is legal for a municipality to require their patrons to vacate the premises after closing time, again, this is answered by the prior opinions of this Office referenced above. State law governs the hours of operation of an

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establishment licensed to sell both liquor and beer and wine. Thus, the establishments must abide by the hours of operation established by state law. Of course, the General Assembly could alter current law if it so chose and such legislation would undoubtedly be constitutional.

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

RDC/an
Enclosures