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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 17, 1997

The Honorable Joe Wilson
Senator, District No. 23
Box 5709
West Columbia, South Carolina 29171

Re: Informal Opinion

Dear Senator Wilson:

You have stated that "[a] positive alternative for persons to not drink and drive is to lease a limousine or bus for partying, but recently the point was raised that this may [violate] the 'open container' law (Sec. 61-4-110.)" You further state that you "can well remember the intent of this law to stop drunken driving of vehicles, but never could its legislative intent be to apply to leased vehicles with a paid, professional driver."

Law / Analysis

S.C. Code Ann. Sec. 61-4-110 provides as follows:

> [i]t is unlawful for a person to have in his possession, except in the trunk or luggage compartment, beer or wine in an open container in a moving vehicle of any kind which is licensed to travel in this State or any other state and that may travel upon the public highways of this State. This section must not be construed to prohibit the transporting of beer or wine in a closed container. A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days.

Request Letter

This Office has interpreted § 61-9-87 on several occasions. In Op. Atty. Gen., Op. No. 84-110 (August 31, 1984), we construed the "open container" law as prohibiting "open containers of alcoholic beverages in the living quarters area of a motor home while it is in motion on South Carolina highways ...." There, we stated as follows:

> Section 61-9-87 expresses the General Assembly's intent to prohibit open containers of beer and wine in moving vehicles of any kind, licensed to travel in this State. While "moving vehicle" is not specifically defined within § 61-9-87, a general reference is made to South Carolina's vehicle licensing laws; thus, the statutory definition of vehicle contained therein and incorporated by implication within § 61-9-87 is controlling. 'Vehicle' is there defined as:
>
> > Every device in, upon or by which any person or property is or may be transported or drawn upon a highway, except devices moved by human power or used exclusively upon stationery rails or tracks ....
>
> Section 56-3-20(1). As is evident by its language, this statutory definition is intended to be broad and open-ended, in contrast with statutes which use the term 'automobile'. See, i.e., 7 Am.Jur.2d 'Automobiles and Highway Traffic', § 1. Moreover, the language chosen by the General Assembly, 'moving vehicle of any kind, licensed to travel in this State or any other state' demonstrates the legislative intent to use the term broadly, to encompass every type of vehicle.

And in Op. Atty. Gen., Op. No. 85-33 (April 10, 1985), we concluded that beer or wine in an open container may be transported in the cargo area behind the rear seat of a station wagon or similar vehicle. In reaching this conclusion, we stated:

> [t]he similarity of the language used by the General Assembly in § 61-5-20(1) and 61-9-87, particularly the phrase 'luggage compartment' must be given significance, since it surely was not happenstance that the General Assembly chose to use the exact language. The regulatory definition of 'luggage compartment' had been operative in the liquor laws for several years without interruption and this technical meaning was

> known to the General Assembly when they chose these exact terms for usage in § 61-9-87. When a statute uses a phrase with a well recognized meaning at law, the statutory presumption is that the Legislature intended to use the words in that sense. Coakley v. Tidewater Construction Corp., 194 S.C. 284, 9 S.E.2d 724 (1940). Similarly, as here, the General Assembly is presumed to have been familiar with the law on the related subject of liquor regulation in moving vehicles in 1984. Bell v. S.C. State Highway Dept., 204 S.C. 462, 30 S.E.2d 65 (1944). Accordingly, we believe that the General Assembly intended that the phrase 'luggage compartment' as used in § 61-9-87 and 61-5-20(1) must be construed together in that they are complementary provisions, both related to the regulation of alcohol in South Carolina. See § 61-3-40; cf. Fidelity and Casualty Ins. Co. of New York v. Nationwide, 278 S.C. 332, 295 S.E.2d 783 (1982). Thus, 'luggage compartment' as defined in R. 7-1D is applicable to § 61-9-87. Accordingly, we conclude that beer or wine in an open container may be transported in the cargo area behind the rear seat of a station wagon or similar vehicle. (emphasis added).

Courts in other jurisdictions with somewhat similar statutes have agreed with the analysis and reasoning of these opinions. In People v. Souza, 15 Cal.App.4th 1646, 19 Cal.Reptr.2d 731 (1993), for example, the Court noted that the purpose of an "open container" statute so written is "to make certain that open containers which contain alcohol are inaccessible to the driver and his passengers." In State v. Erbacher, 8 Kan.App.2d 169, 651 P.2d 973 (1982), the Supreme Court of Kansas stated that the term "person" in the Kansas open container law encompassed passengers as well as the driver. And in Sneath v. Popiolek, 135 Mich.App. 17, 352 N.W.2d 331 (1984), the Michigan Court of Appeals noted that Michigan's Open Container Statute "makes no specific reference to the driver of a motor vehicle." Instead, concluded the Court, "the statute unambiguously proscribes the consumption of all alcoholic liquor on the public highways and the transportation or possession in the passenger compartment of any alcoholic liquor which is open, uncapped, or upon which the container is broken," thus holding that "such a complete prohibition applies to a passenger as well as the operator of a motor vehicle." 352 N.W.2d at 334.

It is, of course, well settled that exceptions made in a statute give rise to the strong inference that no other exceptions were intended. Pa. Nat. Mut. Cas. Ins. Co. v. Parker,

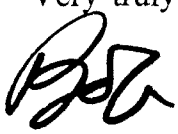
282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984). In certain other states' open container statutes, that state's legislature has created an exception for limousines or vehicles of mass transit. See, e.g. K.S.A. 41-2719 [exception where any cereal malt beverage is in the exclusive possession of a passenger in a vehicle which is a recreational vehicle or a bus who is not in the driving compartment or portion of the vehicle which is accessible to the driver]; Section 41-6-44.20(5) of Utah's Motor Vehicle Act [Open Container prohibition does not apply to passengers traveling in any licensed taxicab or bus.] Pursuant to this latter exception the Utah Attorney General has concluded that "... it is arguable that a limousine service is a form of taxi service" and thus "[u]nder this rationale, passengers in a commercially chauffeured limousine may be in possession of open containers of alcohol product, provided they do not consume the product in the vehicle while moving, stopped or parked on any highway."

I am unaware of any such exception in South Carolina's Open Container law. It may well have been the intent of the Legislature to have created such exception, but the present Open Container Law does not reflect this. Thus, the quoted language contained in Op. No. 85-33, that "beer or wine in an open container may [only] be transported in the cargo area behind the rear seat of a station wagon or similar vehicle ..." is still applicable. Accordingly, as we stated in that Opinion, "beer and wine transported in such manner may not be consumed or possessed by any occupant of the vehicle during its transportation."

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