

The State of South Carolina

3922 Library



Office of the Attorney General

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February 27, 1990

W. M. Roth, Chief  
Town of Lexington  
Post Office Box 397  
Lexington, South Carolina 29072

Dear Chief Roth:

In a letter to this Office you questioned whether the sale or rental of videos is permitted before 1:30 p.m. on Sundays.

Section 53-1-40 of the Code provides

(o)n the first day of the week, commonly called Sunday, it shall be unlawful for any person to engage in worldly work, labor, business of his ordinary calling or the selling or offering to sell, publicly or privately or by telephone, at retail or at wholesale to the consumer any goods, wares or merchandise or to employ others to engage in work, labor, business or selling or offering to sell any goods, wares or merchandise, excepting work of necessity or charity. ...1/

In prohibiting such activities as engaging in the business of one's ordinary calling, the provision prohibits activities in addition to sales on Sunday. Various exceptions to the prohibitions of this statute are provided however. Pursuant to Section 53-1-5 of the Code,

(t)he provisions of this chapter do not apply after the hour of 1:30 p.m. on Sunday.

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1/ Pursuant to Section 53-1-150 of the Code, the blue laws "... do not apply to any county area, as defined in Section 12-35-730 of the 1976 Code, which collects more than nine hundred thousand dollars in revenues from the tax imposed in Section 12-35-710 of the 1976 Code."

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Section 53-1-50 of the Code sets forth various exceptions to the prohibitions of Section 53-1-40. Therefore, the prohibitions of the blue laws are not applicable to any of the specified sales or operations at any time on Sunday and the 1:30 p.m. designation generally for the blue laws is similarly inapplicable to these permitted sales and operations. Also, Section 53-1-60 of the Code specifies certain items which may not be sold or offered for sale on Sunday. Again, however, such sales are only prohibited prior to 1:30 p.m. on Sunday.

As to the provisions of Section 53-1-60, such statute prohibits the sale of "recordings." While such term is not defined, it is listed along with other items prohibited for sale such as musical instruments, recorders, radios, televisions, phonographs, and stereo sets. While it may be asserted that phonograph records are what is covered by such term, arguably, videos might also be included. However, even if there is no specific prohibition in Section 53-1-50, such statute further provides that "(n)o inference shall arise from the foregoing enumeration that either the sale or the offering for sale on Sunday of items or articles not mentioned is permitted."

As noted, Section 53-1-50 authorizes certain sales and operations on Sunday prior to 1:30 p.m. There is no specific authorization for the sale or rental of videos included in such provision. While the sale of "educational supplies" is permitted, I am unable to definitely conclude that such language would permit the sale of any or all videos. Admittedly, certain videos may come within the definition of such term. Only a court could conclusively resolve such question and any such determination as to particular videos would have to be made on a case by case basis.

Also, as noted, Section 53-1-40 does not limit its prohibition to sales only but also prohibits engaging in worldly work or the business of one's ordinary calling or employing others to engage in such activities. As to any questions regarding its applicability to a rental business, Section 53-1-50 does authorize the rental of swimming, boating or fishing equipment on Sundays. However, no other rental businesses or operations are specifically permitted by such provision.

In reviewing this matter I have located opinions of other Attorneys General dealing with this same question. In an opinion dated February 17, 1986 the Louisiana Attorney General determined that a video rental business did not come within that State's exception in its Sunday closing law for "places of resort for recreation and

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health" or "theatres, or any place of amusement, unless intoxicating liquors are sold on the premises." 2/ The Virginia Attorney General in an opinion dated November 28, 1984 held that a business which sells or rents videos does not come within the definition of the term "entertainment center" so as to be authorized to be exempt from that State's blue laws. Similarly in Mack Paramus Co. v. Mayor and Council of the Borough of Paramus, 549 A.2d 474 (1988), the New Jersey Superior Court held that the sale or rental of videos was not a form of recreation or amusement so as to be permitted under the Borough's Sunday sales law. 3/

Referencing the above, no provisions of this State's blue laws authorize the sale or rental of videos on Sunday prior to 1:30 p.m. While certain videos arguably may be sold under the "educational supplies" provision of Section 53-1-50, a determination of what videos would qualify would have to be made on a case-by-case basis.

If there are any questions, please advise.

Sincerely,



Charles H. Richardson  
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions

2/ This opinion apparently reversed an earlier opinion of the Louisiana Attorney General dated March 28, 1984 which found that "the sale and rental of video tapes is analogous to sales by book stores or operation of movie theaters," and therefore could be permitted on Sundays.

3/ Pursuant to Section 53-1-10 of the Code, on Sundays

... (i)t shall be unlawful to operate for professional purposes athletic events, public exhibitions, historic or musical entertainment, or concerts unless a permit shall first be obtained.... (emphasis added)

This statute would appear to be inapplicable to the sale or rental of videos for private, at home use.