

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3680
FACSIMILE: 803-253-6283

May 1, 1990

The Honorable Joyce C. Hearn
Chairman
South Carolina Alcoholic Beverage
Control Commission
1205 Pendleton Street
Columbia, South Carolina 29201

Re: Section 61-5-180

Dear Chairman Hearn:

You inquire concerning the conduct of a county-wide referendum pursuant to South Carolina Code Section 61-5-180 (1976 as amended). This provision authorizes in a general sense the Alcoholic Beverage Control Commission to issue temporary sale and consumption permits for a period not to exceed twenty-four hours. However, these permits may be "issued only in those counties or municipalities where a majority of the qualified electors voting in a referendum vote in favor of the issuance of the permits." Id. You specifically ask whether qualified electors who reside in an incorporated city that has previously held a municipal referendum upon the issue (where the question was decided in the affirmative) may vote in the county referendum.1/

1. This statutory authority to issue temporary permits was first approved on May 24, 1984. 1984 Act 410. The Commission's interpretation that this provision could authorize the sale and consumption of alcoholic liquors on Sunday caused public outcry and the General Assembly thereafter revisited the recently enacted legislation and amended the provision by adding the referendum requirements. 1984 Act 512, Part II, Section 63 [effective June 28, 1984].

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There is an absence of decisional law in this State construing or commenting upon this provision. In addition, because local option legislation is rare in South Carolina, there likewise exists no authoritative judicial precedents that instruct as to how the courts of this State would approach the inevitable questions that arise when the statute is actually applied. This Office has issued one opinion wherein we advised that the language of the statute was not completely clear. Op. Atty. Gen. (October 2, 1984).^{2/} Moreover, there is no significant legislative history that assists in resolving this question, although it is clear that the General Assembly desired that the affected public vote upon the question before temporary permits could be issued.

Of course, the role of the courts (and this Office) in interpreting statutes is to give effect to the intention of the legislature based upon the words of the statute themselves. Busby v. State Farm Mutual Automobile Ins. Co., 280 S.C. 330, 312 S.E.2d 716 (S.C. App. 1984). In addition, the construction of a statute by the administrative officials who are charged with its execution is entitled to most respectful consideration and will not be overruled absent compelling reasons. Emerson Electric Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118 (1986); Welch Moving and Storage Co., Inc. v. Public Service Commission of S. C., ___ S.C. ___, 277 S.E.2d 133 (S.C. App. 1989). This deference to agency construction is enhanced if the underlying statute has been reenacted without amendment. McCoy v. U. S., 802 F.2d 762 (4th Cir. 1986).

I believe that the pertinent statutory language reasonably supports a conclusion that all electors in the county participate in a county-conducted referendum. If the alternative provisions relating to municipalities are edited from the statute, it would read as follows,

[p]ermits authorized by this section may be issued only in those counties ... where a majority of the qualified electors voting in a referendum vote in favor of the issuance of the permits. The county ... election commission shall conduct a referendum upon petition of at least ten percent but not more than twenty-five hundred qualified electors of the county....

Section 61-5-180. Of course, by law each county constitutes a single election unit, S. C. Const. Art. VII, § 9 (1895 as amended),

2. In addition, any conclusions reached in that opinion were tentative at best since the statute had not been construed nor applied by the respective administrative officials.

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and, moreover, ordinarily all registered voters that reside in a county participate in county-wide elections. Again, the General Assembly did not express its intention here to disenfranchise those county residents who reside in the incorporated areas of the county, nor is there any language that would suggest that the General Assembly intends to create election units that represent only portions of the county.

I recognize that the voters, who reside in a municipality that has already voted upon the issue, may not be affected by the referendum results to the same extent as those who reside in the unincorporated areas of the county. Nonetheless, this does not mean that they will not be affected by the election since they clearly are affected, for example, by the county's fiscal affairs and policies, its commercial development policies, its law enforcement burdens and the provision of locally funded health care programs. These are all concerns that may be influenced, at least to some degree, by the outcome of a referendum that could serve to increase the sale of alcoholic beverages in the county. Parenthetically, the United States Supreme Court has held that school board elections cannot be limited to those persons who actually pay local property taxes or have children in the schools. Kramer v. Union Free School District, 395 U.S. 621, 89 S.Ct. 1886, 23 L.Ed.2d 583 (1969). And in order to disenfranchise electors, a state must show a significant degree of disinterest in the electoral decision to justify a total exclusion from the franchise. Evans v. Cornman, 398 U.S. 419, 90 S.Ct. 1752, 26 L.Ed.2d 370 (1970).

The administrative history of the application of this statute, while not particularly helpful upon the subject question, is generally supportive of this conclusion as well.^{3/} I am advised that the county election commissions that have conducted county-wide referendums have consistently allowed participation by all county voters in the respective elections. The results in these elections have been certified to the Alcoholic Beverage Control Commission. I caveat that this administrative history does not clearly resolve the precise issue you have raised since none of the previously held county-wide referendums included a municipality that had conducted a prior discrete referendum. Again, however, the General Assembly has reenacted the statutory language that underlies the conduct of these county referendums, further indication that these referendums should be open to all county voters.

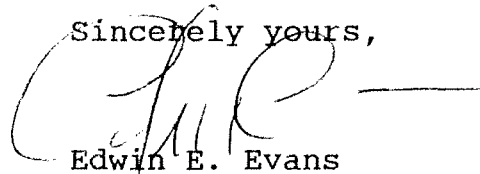
3. I have not independently investigated this history but have relied upon the information provided to me by the Alcoholic Beverage Control Commission.

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The case law from other jurisdictions is not particularly instructive since the holdings generally depend upon statutory or constitutional law that is dissimilar to our statute. For information, I do reference Niette v. Natchitoches Police Department, 348 So.2d 162 (La. App. 1977); Frick v. Central Township, 310 N.E.2d 426 (Ill. App. 1974); and State ex rel Olympia Athletic Club v. Dept. of Liquor Control, 194 N.E. 11 (Ohio 1934). These cases recognize that the respective laws in those jurisdictions required or allowed election units that were composed of the unincorporated areas of the county or portions thereof. Again, the underlying laws in those jurisdictions differed from Section 61-5-180.

In conclusion, I emphasize that the pertinent language of Section 61-5-180 reasonably supports the conclusion that all qualified voters within the county may participate in a county referendum. The General Assembly did not expressly disenfranchise the voters who reside in a municipality that has previously conducted a discrete election upon the issues. This conclusion is supported as well by reasons of policy and administrative practice. Nonetheless, I caution that the statutory language lacks clarity and, in addition, there exists no judicial interpretation or comment upon the provision; thus, any conclusion in this area is not without some doubt.

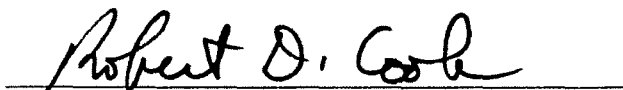
Sincerely yours,



Edwin E. Evans
Chief Deputy Attorney General

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REVIEWED AND APPROVED:


ROBERT D. COOK
Executive Assistant for Opinions