

# 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: 803-734-3970  
FACSIMILE: 803-253-6283

June 20, 1991

Nicholas P. Sipe, Executive Director  
Alcoholic Beverage Control Commission  
1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Mr. Sipe:

In a letter to this Office you requested an opinion regarding the validity of a proposed ruling of the Alcoholic Beverage Control Commission ABC Ruling 91-14, which deals with alcohol-filled candies. The regulation deals with the question as to whether the sale of chocolate candies filled with a mixture containing distilled spirits manufactured for beverage purposes is legal in businesses other than licensed retail liquor stores. The regulation also deals with the question as to whether these candies may be sold in licensed retail liquor stores. You indicated that the candies contain not more than 5% by weight of Kahula, Crown Royal and other brands of alcoholic liquors and are therefore brands manufactured as alcoholic beverages.

The ruling of the Commission stated:

We find no section of South Carolina law that allows or permits possession or sale in businesses, other than licensed retail liquor stores, of alcoholic liquors manufactured for beverage purposes, in whatever form offered. ... We rule, therefore, that although portions of these candies could be called a "food product", the candies contain alcohol manufactured solely for beverage purposes. Therefore, the sale of candies containing alcohol is illegal in this State. Regarding such sales in licensed retail liquor stores, we rule that Section 61-3-1020 ... prohibits the keeping, storing or selling of

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any goods, wares or merchandise other than alcoholic liquors and wines. The offering or sale of alcohol-filled chocolates or other candies in licensed retail stores would, therefore, be illegal.

Pursuant to Section 61-3-20(1) of the Code, the term "alcoholic liquors" as used in Title 61 is defined as

... any spirituous malt, vinous, fermented, brewed (whether lager or rice beer) or other liquors or any compound or mixture thereof by whatever name called or known which contains alcohol and is used as a beverage, but shall not extend to:

- (a) Wine when manufactured or made for home consumption and which is not sold by the maker thereof or by any other person or
- (b) Any beverage declared by statute to be nonalcoholic or nonintoxicating;

Section 61-3-30 of the Code states that

No provision in this chapter, Chapter 7, or Article 3 of Chapter 13, shall apply to alcohol intended for use in the manufacture and sale of any of the following when they are unfit for beverage purposes, namely ...

... (3) Flavoring extracts, syrups and food products ....

Pursuant to Section 61-13-260 of the Code

It shall be unlawful for any person to store or have in possession any alcoholic liquors in his place of business other than a licensed liquor store.

By such provision, a "place of business" includes "any place where goods, wares or merchandise are sold, offered for sale or distributed, and also places of amusement."

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Referencing the above, I am in agreement with your conclusion that State law does not permit the possession or sale in businesses, other than a licensed liquor store, of alcoholic liquors manufactured for beverage purposes. Therefore, as to the sale of chocolate candies filled with a mixture containing alcoholic liquors manufactured for beverage purposes, which, as a result, would not come within the exemptions of Section 61-3-30, I am unaware of any basis to exempt these candies from the restrictions on the sale of alcoholic liquors. Such a determination is consistent with an opinion of the Kansas Attorney General, Opinion No. 86-150. As referenced, Section 61-13-260 of the Code prohibits the storage or possession of alcoholic liquors in businesses other than licensed liquor stores.

As to whether these candies may be sold in licensed retail liquor stores, alcoholic liquors possessed or sold in this State are subject to a comprehensive and complex regulatory scheme. See, e.g., Sections 61-5-20, 61-3-990, 61-7-10 et seq., 61-13-210 and 61-13-800 of the Code; Article VIII-A, Section 1 of the State Constitution. Opin. of the Atty. Gen. dated August 27, 1984. In particular, Section 61-3-990 prohibits the sale or possession of alcoholic liquors in containers or quantities of less than two hundred milliliters. I am unaware of any statutory reference to the type packaging which would be involved in the sale of the candies at issue here. Therefore, candies filled with a mixture containing alcoholic liquors would have to meet requirements for alcoholic liquors generally. Unless these candies would meet all such relevant requirements, these items could not be sold in licensed liquor stores in this State. 1/

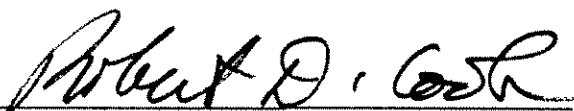
If there is anything further, please advise.

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions

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1/ As to the proposed ruling itself, I would advise that consistent with an opinion of this Office dated May 20, 1991, the Commission's ruling does not have the force and effect of law and is advisory only since it has not been promulgated pursuant to the Administrative Procedures Act.