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The State of South Carolina

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The Honorable Carroll A. Campbell, Jr.
Governor, State of South Carolina
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Elliott D. Thompson, Chairman
Alcoholic Beverage Control Commission
1205 Pendleton Street
Columbia, South Carolina 29201

Gentlemen:

You have asked what legal options are available to the Alcoholic Beverage Control Commission with regard to a licensee who allegedly refuses to serve blacks in his restaurant, licensed by the Commission to sell beer and wine and liquor. It is our opinion that if such facts are adequately proven in a hearing before the Commission, the Alcoholic Beverage Control Commission is empowered to revoke or suspend the individual's license.

To obtain and hold a beer and wine permit in this State, pursuant to the provisions of Section 61-9-320(1) of the Code, an applicant or any employee of the applicant must be "of good moral character." Section 61-9-340 of the Code further provides that the applicant for such a permit must be a "fit person". As to a sale and consumption or minibottle license, Section 61-5-50(b) of the Code provides that such a license may be granted by the Alcoholic Beverage Control Commission upon a finding that the applicant is "of good moral character." If at any time a determination is made that an individual holding a liquor license no longer meets such "good moral character" requirement, the license may be revoked. See: Section 61-5-60(a) of the Code.

This requirement that those who hold licenses to sell intoxicating beverages be of good moral character is universally recognized and accepted. 48 C.J.S. Intoxicating Liquors §§ 37 and 120. ("It is not improper to restrict the right to obtain [liquor] licenses to such persons as are shown to be of good moral character and of good reputation in the community....") Id., § 37, p. 346. And it is

said that in the context of those who hold liquor licenses, the qualification of "good moral character" of a liquor licensee is always material, and many times crucial, in determining whether or not a person" should hold a liquor license. Id. § 105, p. 469. The moral character requirement as used in the context of a liquor licensing statute has been defined by the Florida courts as meaning,

> ... not only the ability to distinguish between right and wrong, but the character to observe the difference; the observance of rules of right conduct, and conduct which indicates and establishes the qualities generally acceptable to the populace for positions of trust and confidence.

Zemour, Inc. v. State Division of Beverage, 347 So.2d 1102 (Fla. App. 1977).

Decisions of the South Carolina courts generally define moral character by identifying those traits that represent a deficiency of moral character. The South Carolina Court recognizes that acts or conduct that involve moral turpitude imply the absence of good moral character and thus the absence of qualities which are required for positions of trust and confidence, such as the holding a liquor license. S. C. State Board of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E.2d 644 (1946); State v. Dean, 271 S.C. 413, 248 S.E.2d 263 (1978); Hughey v. Bradrick, 177 N.E. 911, (Oh. App. 1931) ("... that what is moral is the antithesis of that which involves turpitude.")

> Moral turpitude has been defined by [the South Carolina Supreme] court as "an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the right and duty between man and man...."

State v. Harris, 293 S.C. 75, 358 S.E.2d 713, 714 (1987), quoting State v. Yates, 280 S.C. 29, 310 S.E.2d 805, 810 (1982). Moreover, if an act or conduct involves moral turpitude, the act or conduct constitutes something immoral in itself, regardless whether the act or conduct is punishable by law as a crime. State v. Dean, supra.

Against this backdrop we realize that the Alcoholic Beverage Control Commission may issue liquor licenses only to those who possess good moral character; concomitantly, those lacking in good moral character or those who engage in conduct that involves moral

turpitude no longer meet the basic requirements to hold a license; thus, subjecting their licenses to revocation or suspension by the Commission.

The question now presented is whether racial discrimination by an individual constitutes a reflection upon a person's moral character. We conclude that it does.

The United States Supreme Court has stated that distinctions based on race are "odious to a free people whose institutions are founded upon the doctrine of equality." Loving v. Virginia, 388 U.S. 1 (1967). Classifications based upon race are "contrary to our traditions." Bolling v. Sharpe, 347 U.S. 497 (1954). Distinctions between people based upon the [color of their skin] run counter to all American values. See, Univ. of Cal. Regents v. Bakke, 438 U.S. 265 (1978). The Court has recognized that racial discrimination has a "devastating impact" upon those who are its victims. Supra at 401. It has also been consistently recognized by the Court that racial classifications are an "evil" which must be eradicated. South Carolina v. Katzenbach, 383 U.S. 301 (1966). Most strikingly, it has been stated:

> The lesson of the great decisions of the Supreme Court and the lesson of contemporary history have been the same for at least a generation: discrimination on the basis of race is illegal, immoral, unconstitutional, inherently wrong and destructive of democratic society. [emphasis added]

Bakke, supra, 438 U.S. at 295, n. 35, quoting, Bickel, The Morality of Consent, 133 (1975). As has been written,

> [Racial discrimination] is unattractive in any setting but it is utterly revolting among a free people....

Korematsu v. United States, 323 U.S. 214 at 242..

We have found authority which has concluded that racial discrimination by one who possesses a liquor license is an adverse reflection upon that individual's moral character. In Hyatt Corp. v. Honolulu Liquor Commn., 738 P.2d 1205 (Haw. 1987), for example, the Court concluded that a regulation by the Liquor Commission prohibiting racial discrimination by a licensee was valid. The Court referred in part to the Commission's enabling legislation which authorized the Commission to refuse to grant a license to any person deemed by the Commission not a "fit and proper person" to have a license.

And in Easebe Enterprises v. Rice, 190 Cal. Reptr. 678 (1983), the Court held that sex discrimination was ample grounds for the revocation of a liquor license. In B.P.O.E. Lodge No. 2043 of Brunswick v. Ingraham, 297 A.2d 607 (Me. 1972), the Court held that a liquor licensing agency could consider a licensee's practice of racial discrimination as reflecting upon the character of the licensee, because such discrimination was contrary to the public policy of the state.

Of course, federal law in the form of the Civil Rights Act of 1964 clearly prohibits racial discrimination in public accommodations. See, 42 U.S.C. Section 2000. Federal law also makes it a criminal offense for one under color of law to violate an individual's constitutional and civil rights, 18 U.S.C. Section 242, or to interfere with any person's enjoyment of accommodations of any facility that is principally engaged in selling food or beverages to the public. 1/ 18 U.S.C. § 245(b)(2)(F).

South Carolina law also makes racial discrimination unlawful. Section 1-13-20 of the Code (1976) states:

> The General Assembly hereby declares the practice of discrimination against any individual because of race ... as a matter of State concern and declares that such discrimination is unlawful and in conflict with the ideals of South Carolina and the nation, as such discrimination interferes with the opportunities of the individual to receive employment and to develop according to his own ability and is degrading to human dignity.

As we understand it, this situation involves a public accommodation, not a private club. As we have previously noted, important First Amendment rights may be relevant to the situation where a private club is involved. See Op. Atty. Gen., March 13, 1987 (no statutory authority authorization to revoke liquor license of private club, but a statute, if enacted, would be constitutional). Even at common law and based upon custom, public accommodations were open to all members of the public. Bell v. Md., 378 U.S. 226 at 298 (1964). It is always deemed by the law to constitute moral turpitude for any act of depravity "in the private and social duties which a man owes to his fellow man..." 58 C.J.S., Moral.

1/ Pursuant to § 61-5-20 the business must be engaged primarily and substantially in the preparation and serving of meals in order to hold a sale and consumption license.

CONCLUSION

In conclusion, our society no longer tolerates racial discrimination in public accommodations. The days of Jim Crow laws are long gone. The clock must not be turned back.

Racial discrimination in public accommodations is not only violative of federal and state laws but contrary to basic human decency and dignity. Virtually all authorities now deem such discrimination as an "evil" or "immoral" act.

Therefore, we believe that there exists ample authority for the Alcoholic Beverage Control Commission to revoke or suspend a license issued by it if proven that the licensee is discriminating on the basis of race in the operation of the licensed establishment.

Sincerely yours,

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