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The State of South Carolina



Office of the Attorney General

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December 20, 1985

The Honorable Dill Blackwell  
Member, House of Representatives  
Route 5, Box 238  
Travelers Rest, South Carolina 29690

Dear Representative Blackwell:

In a letter to this Office you included a copy of a deed dated November 29, 1947 from H. E. Hart to Leonard D. Nix which placed the following restriction on the property conveyed: "No beer, wine or intoxicating liquor shall be sold on this property." Another restriction prohibited the operation of a commercial establishment on the property on Sunday. However, in our telephone conversation, you indicated that you were not requesting an opinion on this latter restriction. The deed further states that such restrictions are

"... a part of the consideration for this deed, and are for the benefit of the remaining property of the grantor and can be enforced by the grantor, his heirs, successors and assigns, by injunction or action for damages...."

The property which was the subject of the deed has been conveyed several times since the conveyance to Mr. Nix. You are questioning whether a present heir of Mr. Hart may legally enforce the restriction on the sale of alcoholic beverages at this time.

Generally, it has been stated that:

"(a) covenant, restriction, or condition in a deed, restricting or forbidding the sale of liquor on the premises conveyed, is, unless its purpose is to secure a monopoly of the business to the grantor, generally regarded as valid and enforceable, even though such

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sales are not illegal ... Covenants against the sale of liquor upon premises may be created so as to run with the land and so as to bind subsequent grantees with actual or constructive notice thereof." 45 Am.Jur.2d, Intoxicating Liquors, Section 539 p. 843. See also: Wilson v. Golman, 563 S.W.2d 655 (1978); Cornett v. City of Houston, 404 S.W.2d 602 (1966); Colby v. McLaughlin, 310 P. 2d 527 (1957); Reichert V. Weeden, 618 P. 2d 1216 (1980).

Therefore, it is clear that restrictions prohibiting the sale of alcoholic beverages, such as the restriction provided in the deed cited above, may be upheld.

While such restrictions may be regarded as generally enforceable, this Office cannot comment on whether an heir of Mr. Hart may now legally enforce such a restriction inasmuch as we cannot advise as to whether a court would or must enforce such restriction. It is apparent that any determination as to the enforceability of such restriction may be dependent on factual issues not readily known. This Office has previously determined that we are not able in a legal opinion to adjudicate or investigate factual questions. See: Opinion dated October 9, 1985. The particular resolution of any factual issue may influence a court's decision regarding the present enforceability of such restriction. Moreover, it is recognized that the law favors the free and unrestricted use of property with all doubts and ambiguities being resolved in favor of the free use of property and, therefore, against restrictions. Vickery v. Powell, 267 S.C. 23, 225 S.E.2d 856 (1976). Also, it has been stated that

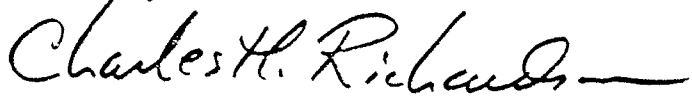
"(a) change in the character of the neighborhood which was intended to be created by restrictions has generally been held to prevent their enforcement in equity, where the change is such that it is no longer possible to accomplish the original purpose intended by such restrictions, or where enforcement would be inequitable...." 20 Am.Jur.2d Covenants, Conditions, Etc., Section 281 pp. 842-843. But see: Inabinet v. Booe, 262 S.C. 81, 202 S.E.2d 643 (1974) (changed conditions must be so radical as to practically destroy essential objectives and purposes of restrictive covenants in order to defeat enforcement of covenants.)

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Aside from the question of the present applicability of the restrictions to the property, any decision by the South Carolina Alcoholic Beverage Control Commission as to licensing an establishment so as to provide for the sale of alcoholic beverages would generally be unaffected by restrictions affecting a particular property. Section 61-5-190 of the Code, as amended, provides that the Commission is the sole authority empowered to regulate the operation of all retail outlets authorized to sell alcoholic beverages. More particularly it has been stated that "... covenants in deeds against the sale of intoxicating liquors do not affect the jurisdiction of a licensing authority, or limit its authority to issue a license...." 48 C.J.S., Intoxicating Liquors, Section 95 p. 448.

In conclusion, it is our opinion that the restrictions you have inquired about may be enforced by the courts. Of course, the issue of whether a particular court would enforce a particular restriction, such as that referenced in your letter, would remain within the province of that court. If there is anything further, please advise.

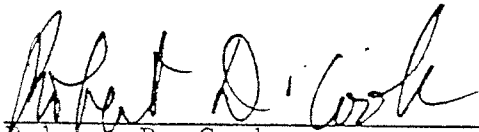
Sincerely,



Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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Executive Assistant for Opinions