

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

October 16, 1986

The Honorable Olin I. Blanton, Jr.
Horry County Magistrate
1015 Dunbar Street
Myrtle Beach, South Carolina 29577

Dear Magistrate Blanton:

In a letter to this Office the question was raised as to whether State statutory procedures providing for the ejectment of tenants, Sections 27-37-10 et seq. of the Code, are applicable to hotel or motel customers. As will be explained below, the answer to your question is dependent in some respects on the particular facts surrounding occupancy at a hotel or motel. The mere fact that a hotel or motel is involved does not absolutely resolve the question as to whether a landlord-tenant relationship does or does not exist.

It is generally stated that:

(w)hile it has been observed that the distinction between a tenant on the one hand and a guest, boarder or lodger on the other is substantial, well settled, and fully recognized by the authorities, it has also been pointed out that in some classes of establishments the tendency of these different classes of occupants is to shade into each other, and that attention must therefore be given to the detailed criteria that must be relied on to decide into which class given individuals fall. A principal distinction between the relationship of landlord and tenant and that existing between innkeeper and guest ... exists in the fact that the tenant acquires an interest in the real estate, while the

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guest, boarder, or lodger does not; a guest is a mere licensee, and not a tenant ... (T)he mere fact that a building is operated, advertised, and known as a 'hotel' is not conclusive of the character of any particular occupancy therein, and a person who occupies rooms in a 'hotel' may, under the circumstances of the case, be a tenant and not a guest....
43A C.J.S. Inns, Hotels, Etc. Section 5.

The South Carolina Supreme Court has expressly stated that without a contract between the parties, either express or implied, the landlord-tenant relationship cannot exist. Stewart-Jones Co. v. Shehan, 127 S.C. 451, 121 S.E. 374 (1924).

During this past legislative session, the General Assembly enacted comprehensive legislation governing the relationship of landlords and tenants, Act No. 336 of 1986. As to ejectment actions generally, Article V, Section 44 of the Act provides:

Chapter 35, Title 27, Chapter 37, Title 27 ... (ejectment of tenants) ... and Article 3, Chapter 39, Title 27 ... (distrain proceedings) ... are not applicable to the leasing or renting or to leases or rental agreements concerning any real property insofar as they are inconsistent with the provisions of this act, including the rights and remedies of landlords and tenants thereto....

Therefore, pursuant to such provision, the General Assembly has specifically provided that State statutory procedures providing for the ejectment of tenants are superceded by the provisions in the Landlord-Tenant Act where they are in conflict with the provisions of the new legislation.

In Article I, Part II, specific exclusions from Act No. 336 were established. Such provision states in part:

(t)he following arrangements are not governed by this act:

....

- (4) transient occupancy in a hotel, motel, or other accommodations subject to the

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sales tax on accommodations as provided
by Section 12-35-1120 of the 1976
Code;

While pursuant to the above particular exclusion Act No. 336 is inapplicable to transient guests in a hotel or motel, in a non-transient situation, such provisions apparently would control. Such exception to the Landlord-Tenant Act for transient guests in a hotel or motel is consistent with the statement referenced above noting the general distinction between the relationship of landlord and tenant and that of innkeeper and guest.

In response to your specific question as to whether State statutory procedures providing for the ejectment of tenants would be applicable to hotel or motel customers, again, a general answer cannot be provided. Instead, the particular situation would have to be examined. As noted, the mere fact that a hotel or motel is involved does not resolve the question. In some situations, depending on the "contract" between the parties, a landlord-tenant relationship may exist. However, typically, it appears that in a situation where an individual is a transient occupant of a hotel or motel, provisions applicable to a landlord-tenant relationship, such as the procedure for ejectment of tenants, would not apply.

If there is anything further, please advise.

Sincerely,

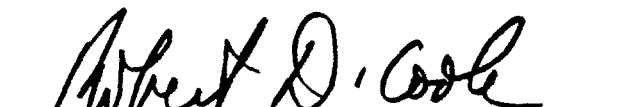


Charles H. Richardson
Assistant Attorney General

CHR/an

cc: Paul Joseph, Esquire

REVIEWED AND APPROVED BY:


Robert D. Cook
Executive Assistant for Opinions