

The State of South Carolina



Office of the Attorney General

Opinion No 86-124
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December 18, 1986

Frank Powell, Sheriff
County of Richland
Post Office Box 143
Columbia, South Carolina 29201

Dear Sheriff Powell:

In a letter to this Office you questioned whether a law enforcement agency can use an underage undercover agent to purchase alcoholic beverages for the purpose of obtaining convictions for the sale of alcoholic beverages to underage individuals.

This Office in an earlier opinion dated September 27, 1978 concluded that to use a minor to purchase beer, wine or other alcoholic beverages, and then subsequently arrest the seller, does not constitute entrapment. The opinion further advised that

(t)he fact that the seller may allege that the officers were contributing to the delinquency of the minor would not affect the legality of the arrest of the seller. That question presents a collateral issue which ... appears to have no prohibition in the law.

However, since the opinion was written, the General Assembly has enacted a statute particularly applicable to the situation addressed by you. Section 61-9-85 of the Code states:

If a person is charged with a violation of § 61-9-40 (the unlawful sale of beer or wine to minors), the minor shall

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also be charged with a violation of § 20-7-370 (unlawful purchase or possession of beer or wine). In addition, if the minor violated § 61-9-50 (false information as to age) or if an adult violated § 61-9-60 (unlawful purchase of beer or wine for a person who cannot lawfully buy), these persons shall also be charged with their violations.

Unless the provisions of this section are followed, no person charged with a violation of § 61-9-40 shall be convicted of such offense.

Nothing herein contained shall require that charges, once made pursuant to this section, be prosecuted to conclusion, but rather this determination shall be made in the manner provided by law.

If there is anything further, please advise.

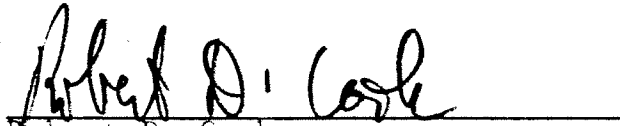
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:



Robert D. Cook
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