

The State of South Carolina

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Office of the Attorney General

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April 30, 1985

The Honorable A. Victor Rawl
Member, House of Representatives
323-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Rawl:

In a letter to this Office you referenced Section 61-13-410 of the 1976 Code of Laws and questioned whether a search warrant is necessary to carry out the searches authorized by such provisions. If a warrant is not necessary, you questioned what areas can be searched without a warrant. Section 61-13-410 provides that:

"(a)ny person who shall upon presentation of a legally executed search warrant, and upon demand of any officer or agent of the Commission or of any peace officer, refuse to allow full inspection and search of the premises or who shall hinder or in any wise delay or prevent full inspection or search, shall be deemed guilty of a misdemeanor and, upon conviction, be fined not more than two hundred dollars or imprisoned for a period not exceeding sixty days, or both; provided, that no occupied dwelling house shall be searched between sundown and sunrise. Any person who shall upon demand of any officer or agent of the Commission or of any peace officer refuse to allow full inspection of the premises or any part thereof which is licensed to sell alcoholic liquors or beer or wine, or refuse to allow full inspection of the stocks and invoices of the licensee or who shall hinder or in any wise delay or prevent such inspection

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shall be deemed guilty of a misdemeanor and, upon conviction, be fined not more than two hundred dollars or imprisoned for a period not exceeding sixty days, or both."

A careful reading of such provision indicates that two types of searches are authorized by such provision, i.e., a search of "premises," which would include a dwelling house, for which a search warrant is required and a search of premises or any part thereof which are licensed to sell alcoholic liquors, beer, or wine for which a search warrant is not required. The provision relating to searches with a warrant should be read in conjunction with Section 61-13-840 of the 1976 Code of Laws which provides for the issuance and execution of search warrants for premises where "contraband liquor is being unlawfully concealed, kept or stored."

As stated, Section 61-13-410 authorizes a "full inspection", without a warrant, of all premises or any part thereof which are licensed to sell alcoholic liquors or beer and wine. Also authorized is the full inspection of the stocks and invoices of a licensee. Generally,

"(a) search for, and seizure of, illicit intoxicating liquor, and property used in connection therewith, may be made without a search warrant where such a search or seizure is permitted by a valid statute." 48A C.J.S. Intoxicating Liquors, Section 377, p. 41. See also: 48 C.J.S. Intoxicating Liquors, Sections 41 and 47, pp. 356-359, 377-378.

In State Liquor Commission v. Gilbert, 270 A.2d 876 (1970), the Maine Supreme Court noted that the merchandising of alcoholic beverages is an enterprise which has from its beginning been subject to governmental restriction, regulation and control. The Court stated:

"(t)he legislature within its inherent police power has broad authority to devise controls considered by it appropriate and including the authorization of searches not unreasonable." 270 A.2d at 878.

The broad power of Congress in designing powers of inspection under federal liquor laws was noted by the United States Supreme Court in Colonnade Catering Corporation v. United States, 397 U.S. 72 (1970). In such case, the Court stated:

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"... (w)e deal here with the liquor industry long subject to close supervision and inspection. As respects that industry, and its various branches including retailers, Congress has broad authority to fashion standards of reasonableness for searches and seizures... ." 397 U.S. at 77.

Consistent with the above, the General Assembly pursuant to Section 61-13-410 authorized certain searches, both with and without a warrant. The authority to search is quite broad inasmuch as with a warrant a "full inspection and search" of certain premises is authorized. A warrantless search of certain premises or any part of such premises which are licensed to sell alcoholic beverages is also authorized.

Referencing Section 61-5-190 of the 1976 Code of Laws, you also asked whether the authority granted the State Alcoholic Beverage Control Commission to regulate the wholesale and retail sale of alcoholic beverages limits the authority of local law enforcement officers to enforce state law provisions dealing with alcoholic beverages without ABC agents being present. Such provision states:

"(t)he South Carolina Alcoholic Beverage Control Commission is the sole and exclusive authority empowered to regulate the operation of all retail locations authorized to sell beer, wine, or alcoholic beverages and is authorized to establish such conditions or restrictions which the Commission in its discretion considers necessary before issuing or renewing any license or permit.

Nothing contained in this section may be considered as preventing judicial appeals from decisions of the South Carolina Alcoholic Beverage Control Commission, as allowed by law, nor as limiting in any way the authority of the courts in interpreting and applying the laws of this State relating to matters administered by the commission."

In an opinion dated August 22, 1984, a copy of which is enclosed, this Office dealt with the question of whether a county could regulate the hours beer and wine could be sold within the county. The opinion, referencing Section 61-5-190, concluded that while no attempts were made to define the limits of the State's occupation and preemption by such provision, the hours beer and wine can be sold was a matter within the "exclusive

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authority" of the State Alcoholic Beverage Control Commission to regulate. Therefore, counties lack authority to regulate the hours of sale of beer and wine.

Even though a county is not authorized to regulate by ordinance such matters as the hours of sale of beer and wine inasmuch as such are within the control of the State, local law enforcement officers are authorized to enforce state law provisions dealing with such matters. In an opinion dated January 16, 1985 this Office dealt with the question of whether a certain municipality was empowered to enforce an ordinance in that part of the municipality which lies below the high water mark of a body of water which was within its municipal limits. Generally, all lands lying below the mean high water mark of navigable streams are considered to be subject to the public trust in the State for public purposes. This Office stated in the opinion that absent specific statutory authority permitting such enforcement, the municipality lacked authority to enforce its ordinance below the particular high water mark. However, the opinion further stated that local law enforcement officers could enforce any State statutes upon that part of the municipality which lies below the high water mark of the body of water which was within the municipal limits. Similarly, even though a county cannot regulate the hours beer and wine may be sold within the county, Section 61-5-190 does not limit the authority of local law enforcement officers to enforce state law provisions dealing with alcoholic beverages. See, 16A McQuillin, Municipal Corporations, § 45.15. Thus, such officers could enforce these laws without being accompanied by State Alcoholic Beverage Control Commission agents.

If there are any questions concerning the above, do not hesitate to contact me.


Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR:djg
Enclosure

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions