

The State of South Carolina



Office of the Attorney General

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October 28, 1985

E. A. Brant, Chief of Police
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Police Division
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Orangeburg, South Carolina 29115

Dear Chief Brant:

In a letter to this Office you questioned the legality of a city ordinance requiring certain types of businesses to close at a certain time. As I understand your letter, you are referencing proposed action by your city council inasmuch as there is currently not an ordinance which requires such closings. Also, no specific language for such an amendment was forwarded to this Office for our review.

As to the validity and reasonableness of municipal ordinances regulating the hours of a business, no generalizations may be made. Typically, the question of whether such regulations are reasonable or valid is dependent to a large measure on the nature of the business regulated. 56 Am.Jur.2d, Municipal Corporations, Section 474 B.526.

It has been stated that:

"(u)nder specific authorization or under general police power, municipal corporations can make regulations as to hours of business for certain businesses, where the regulations are reasonable and based on fair clarification and where they are reasonably related to a legitimate object of the police power, to wit, the public health, safety, morality or welfare ... (However) ... (i)n contrast to the foregoing discussion, ordinances regulating the hours of business of certain

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types of businesses have been held unconstitutional as depriving their owners of their property without due process of law ... Without doubt, an ordinance regulating the hours during which a business may be operated, which does not tend to benefit the public health, morals, safety or general welfare cannot be justified on theory that it was passed under police power." 7 McQuillin Mun. Corp. (3rd Ed.), Section 24.328 pp. 203-204. See also: Opinions of this Office dated October 12, 1984 and September 5, 1979; 56 Am.Jur.2d, Municipal Corporations, etc., Section 474, pp. 526-527.

Furthermore,

"... (o)rdinances and regulations pertaining to hours of business in private enterprise must conform to the statutes and public policy of the State. In this connection the view has been taken that where state law imposes no restriction as to hours of a particular business, an ordinance cannot restrict the hours of business and require the business to close at a specified hour in the evening." 7 McQuillin Mun. Corp. (3rd Ed.), Section 24.329 p. 205.

The South Carolina Supreme Court in Painter v. Town of Forest Acres, 231 S.C. 56, 97 S.E.2d 71 (1957) held that a town ordinance which required all businesses to close at midnight violated provisions in the State Constitution which require that no person shall be deprived of property without due process of law and that private property cannot be taken for public use without just compensation. The Court particularly stated:

"(a) municipal corporation cannot make a business a nuisance by merely declaring it to be such ... and property consists not merely in its ownership and possession but an unrestricted right of use, enjoyment, and disposal. Anything which destroys one or more of these elements to that extent, destroys the property itself." 231 S.C. at 60.

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It was also noted that a substantial value of property is in its use.

Certain State statutes do provide for the closing of particular businesses at certain times. For instance, Section 52-13-10 of the Code prohibits the operation of "public dance halls" between the hours of midnight Saturday and midnight Sunday. Billiard rooms are required to be closed at eleven o'clock each night and remain closed until six o'clock the following morning. See: Section 52-11-10(6) of the Code. This State's "blue laws," Sections 53-1-5 et seq. prohibit the operation of certain businesses until after 1:30 p.m. on Sunday. Obviously, such statutes may be enforced where applicable within your municipality.

Referencing the above, it is clear that the validity of an ordinance requiring businesses to close at a certain time is dependent upon several variables. I would advise that you discuss any proposals for such an ordinance with your city attorney inasmuch as any such ordinance must be carefully drafted to avoid constitutional problems.

You also asked whether a certain amusement center operating in your town on Sunday is in violation of this State's "blue laws." You indicated that the amusement center has eleven pool tables, twenty-two video machines (some inoperative) and sells snacks to its patrons. According to your letter, the hours of such establishment vary but the center is open on Sundays.

As referenced above, state statutes regulate in certain respects the operation of billiard or pool rooms in this State. See: Sections 52-11-10 et seq. of the Code. However, in Melody Music Co. v. McLeod, 248 S.C. 545, 151 S.E.2d 749 (1966), the State Supreme Court held that the operation of a billiard or pool table in places where the principal business is something other than the operation of pool or billiard tables is not subject to the provisions of State law outlining the "lawful manner" of operating billiard or pool rooms generally. See: Section 52-11-10(6). An opinion of this Office, 1967 Op. Atty. Gen. No. 2218 p. 13, stated that the term "principal business" as used in the Melody Music case meant that if the main activity of the business is the operation of billiard or pool tables, then, in such circumstances the establishment would be a billiard or pool room. Another opinion of this Office dated April 3, 1975, stated that unless a place of business is a pool room within the definition of the State statute, the mandatory closing hours set forth by State law do not apply.

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Other opinions of this Office have dealt with the authorization of a municipality to regulate the operation of pool rooms within their boundaries. Referencing Section 52-11-40, it was concluded that a municipality is authorized to prohibit the operation of pool rooms within its municipal limits. See: 1968 Op. Atty. Gen. No. 2464 p. 129 (enclosed). A 1976 opinion citing decisions of the State Supreme Court recognizing a municipality's authority to regulate pool halls concluded that a municipality may enact an ordinance prohibiting the operation of pool tables in other businesses after a specified hour. See: 1976 Op. Atty. Gen. No. 4271 p. 88 (enclosed).

Based upon your description of the business in your town, it is questionable whether it would be classified as a pool room or billiard room so as to be subject to the provisions noted above. Inasmuch as video machines are set up in the business and food and drinks are sold it could probably be concluded that the operation of the pool tables is not the "principal business" of the establishment. However, this is a factual question which should be referred to your city attorney who is in a better position to advise you on this issue.

As to your specific question concerning whether this particular business if operated on Sunday would violate the "blue laws", in another opinion of this Office dated September 15, 1976, a copy of which is enclosed, it was determined that the operation of a family entertainment center, in which was located coin-operated game machines and which sold food and drinks through the use of vending machines, would constitute the business of one's ordinary calling as stated in Section 53-1-40. Therefore its operation would be controlled by the "blue laws". Since the opinion was written, the "blue laws" have been amended as referenced above so as to be inapplicable after 1:30 p.m. on Sunday. Therefore, as to the business referenced by you, it appears that it could operate after 1:30 p.m. on Sunday. Of course, I am assuming as pointed out above, that the business should not be considered as being a pool hall so as to be subject to the provisions of Sections 52-11-10 et seq. which, as stated, prohibit the operation of a pool room on Sunday.


I suggest that you discuss this letter with your city attorney inasmuch, as stated, he is in a better position to advise you as to this particular business and he is most familiar with present ordinances of your city which may be

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useful to you in controlling your problems with the establishment referenced in your letter.

With best wishes, I am

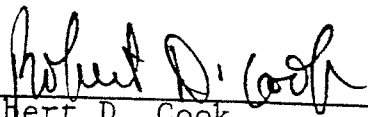
Very truly yours,


Charles H. Richardson
Assistant Attorney General

CHR/an

Enclosures

REVIEWED AND APPROVED BY:


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