

1983 WL 182095 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 4, 1983

**\*1 RE: Blue Laws**

The Honorable Frank Powell  
Sheriff  
Richland County  
1400 Huger Street  
Post Office Box 143  
Columbia, South Carolina 29201

Dear Sheriff Powell:

Attorney General Medlock has referred your letter dated August 1, 1983, to me for reply. I have also discussed my preliminary conclusions with you by telephone.

The question presented was: If a clerk or cashier in a grocery store sells an illegal item under the Blue Laws, can the manager of the store be charged without charging the clerk?

[Sections 53-1-10 et seq., Code of Laws of South Carolina \(1976\)](#), commonly known as the Blue Laws, are divided into four (4) categories; as far as criminal enforcement is concerned. Section 53-1-40 provides:

On the first day of the week, commonly called Sunday, it shall be unlawful for any person to engage in worldly work, labor, business of his ordinary calling or the selling or offering to sell, publicly or privately or by telephone, at retail or at wholesale to the consumer any goods, wares, or merchandise, or to employ others to engage in work, labor, business or selling or offering to sell any goods, wares or merchandise, excepting work of necessity or charity . . . (Emphasis added).

Section 53-1-50 sets forth certain exceptions to the prohibitions contained in § 53-1-40. The exceptions are related to certain business, activities, sales of certain items, and farming operations.

Section 53-1-60 specifically prohibits the sale of certain items on Sundays.

And § 53-1-70 sets forth the penalty scheme for violation of the Blue Laws:

A violation of any of the provisions of § 53-1-40 shall be punished by a fine of not less than \$50 nor more than \$250 in the case of a first offense, and by fine of not less than \$100 nor more than \$500 for each and every subsequent offense. Each separate sale, offer or attempt to sell on Sunday, and each Sunday a person is engaged in other work, labor or business in violation of § 53-1-40, or employs others to be so engaged, shall constitute a separate offense. (Emphasis added).

It is clear, therefore, from the statutes as written that not only would a sales clerk be in violation of the law for selling certain prohibited items on a Sunday, but also the clerk's employer. Therefore, the statute would extend to the manager of the store. This construction of the statute does not appear to have been addressed by any court at this writing, but it has been followed in opinions of this office issued to Sheriff Metts of Lexington County on October 20, 1981, and Chief Edward Simmons, Gaffney Police Department, on March 9, 1973. Copies of each of those opinions are enclosed for your information.

Since the manager of the store could be criminally liable under our present statutes, arrest of the manager, and not the store clerk, would remain within the discretion of the arresting officers.

Please be advised that the foregoing is not without certain warnings. The language in §§ 53-1-40 and 53-1-70 describing persons who are engaged in the unlawful sale of items, or who employ others to be so engaged, implies a knowledge on behalf of the employer that the employee is violating the law.

\*2 In conclusion, therefore, it would appear that employers of individuals selling items on Sunday in violation of the Blue Laws could be held criminally liable. Election by your department to arrest a manager and not a clerk or cashier, would be within the discretion of the arresting officer. Knowledge on behalf of the employer would have to be established at trial.

Sincerely yours,

James G. Bogle  
Assistant Attorney General

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