

1981 WL 157787 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 18, 1981

*1 Ms. Claire Harley
Research Assistant
General Committee of the South Carolina State Senate
Post Office Box 142
Columbia, South Carolina 29202

Dear Ms. Harley:

You have asked this office for our thoughts concerning the constitutionality of Senate Bill 427 of 1981, particularly the provision requiring an affirmation from the producer or American source of supply, that he shall not willfully sell or offer for sale any wines of a particular brand and proof in any State in the United States at a price lower than the price such wines are sold or offered for sale to licensed South Carolina wine wholesalers. In your requesting letter you did not point out any particular problem with the Bill but only asked for our general review.

The language in Senate Bill 427 is similar to that presently codified at § 61-7-100 of the 1976 Code, which requires that importers affirm that they sell liquor in South Carolina at prices as low as elsewhere in the country. This provision is not unique in state regulatory statutes governing alcoholic beverages and beer and wine. The United States Supreme Court in [Joseph E. Seagram & Sons, Inc. v. Donald S. Hostetter](#), 384 U.S. 35 (1966), approved New York's regulatory scheme for liquor, concluding that it was constitutional on its face and did not offend the anti-trust laws. The New York statute required that sales to wholesalers and retailers must be accompanied by an affirmation that the bottle and case price of higher is no higher than the lowest price at which sales were made anywhere in the United States during the preceding month.

Accordingly, I would advise that the affirmation requirement of Senate Bill 427 is most probably not in violation of the Constitution.

Very truly yours,

Edwin E. Evans
Assistant Attorney General

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