

1982 S.C. Op. Atty. Gen. 31 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-28, 1982 WL 154998

Office of the Attorney General

State of South Carolina

Opinion No. 82-28

April 22, 1982

***1 SUBJECT: Taxation, County Ordinance, License Tax**

1. Marion County is prohibited from imposing a business license tax on beer, wine and alcoholic beverages.
2. Other than the restrictions imposed by the provisions of § 61-5-150, Marion County is not restricted as to the use of taxes distributed to it from beer, wine and alcoholic beverages.

TO: William H. Seals, Esq.
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QUESTIONS:

1. May Marion County impose a business license tax on the sale of beer, wine and alcoholic beverages?
2. May Marion County allocate fifty-six (56%) percent of taxes distributed to it from beer, wine and alcoholic beverages to fund the Marion County Commission on Alcohol and Drug Abuse?

STATUTES:

§§ 4-9-30, 12-21-1080, 12-33-20, 61-5-130 and 61-5-150, 1976 South Carolina Code of Laws, as amended.

DISCUSSION ON QUESTION 1:

The powers vested in the county by the General Assembly are enumerated in § 4-9-30. Section 4-9-30(12) specifically states that the county has the power to levy uniform license taxes upon persons and businesses within the county with such license tax graduated according to gross income. However, all of the enumerated powers are 'subject to the general law of this State'.

The general law of the State of South Carolina imposes restrictions upon the powers of a county to impose taxes on beer, wine and alcoholic beverages. Section 12-21-1080 relating to beer and wine states as follows:

'Except as provided in §§ 12-21-1310 to 12-21-1350, the taxes provided for in this article shall be in lieu of all other taxes and licenses on beer and wine of the State, the county or the municipality and shall include licenses for its delivery by the wholesaler.' (Emphasis added)

Section 12-33-20 relating to alcoholic beverages states:

'The license and excise taxes provided in this chapter [33] for the privilege of engaging in the business of manufacturing and selling alcoholic liquors shall be in lieu of all other taxes and licenses, State, county and municipal, except property, State income and corporation license taxes.' (Emphasis added)

Based on these statutes, a county is prohibited from imposing a business license tax on beer, wine and alcoholic beverages. This conclusion is consistent with the opinion of this office in 1966-67 OAG No. 2229, p. 27, dealing with the powers of municipalities.

DISCUSSION ON QUESTION 2:

The use of the tax funds received by Marion County from State collection of beer, wine and alcoholic beverages may be restricted by the General Assembly. For example, § 61-5-150 specifies that twenty-five (25%) percent of the twenty-five (\$.25) cents mini-bottle tax imposed by § 61-5-130 is to be distributed to the county and imposes the following restriction:

‘* * * to be used for educational purposes relating to the use of alcoholic liquors and for the rehabilitation of alcoholics and drug addicts.’

*2 Further, it should be noted that the General Assembly may restrict the amount and use of funds appropriated to the counties from beer, wine and alcoholic beverage taxes on an annual basis under the Appropriations Act.

After a review of the existing law, no restrictions as to use other than those imposed by § 61-5-150 have been found, however as noted, the Appropriations Act may restrict the use of such funds. A review of the 1981 Appropriations Act does not reveal any restrictions upon the use of such funds by the counties. Thus, other than the use restrictions imposed by § 61-5-150, there are currently no restrictions upon the use of taxes distributed to the counties from beer, wine and alcoholic beverages.

CONCLUSIONS:

1. Marion County is prohibited from imposing a business license tax on beer, wine and alcoholic beverages.
2. Other than the restrictions imposed by the provisions of § 61-5-150, Marion County is not restricted as to the use of taxes distributed to it from beer, wine and alcoholic beverages.

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