1982 WL 189378 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 22, 1982

***1** The Honorable Herbert Kirsh
Member House of Representatives
105 Bellwood Drive
Clover, South Carolina

Dear Representative Kirsh:
You have asked this office whether York County Council may pass an ordinance prohibiting the sale of cold beer for on premises consumption at facilities, such as ballparks, where large crowds may gather or congregate. It is the opinion of this office that such an ordinance is beyond the authority of the County Council.

It is generally said that municipalities have the authority to regulate and restrict the sale of beer and wine within their city limits as the particular circumstances warrant. See, § 5-7-30, Code of Laws of South Carolina, 1976, as amended; City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242. However, under the Home Rule Act, there has been no express grant of police power to the county § 4-9-30, Code of Laws of South Carolina, 1976, as amended; 1975 Op. Atty. Gen. No. 4118, at p 192 [attached].

Further examination of the Home Rule Act reveals no authority for a county to undertake such an action. Subsection (14) of this section empowers counties to 'enact ordinances for the implementation and enforcement of the powers granted in this section . . ..' In reviewing the other provisions of the Home Rule Act, there is no specific authority for the counties to regulate the sale of beer and wine. Therefore, any county authority for enacting ordinances regulating beer sales under the Home Rule Act would come from subsection (17) of § 4-9-30, which grants counties authority 'to exercise such other powers as may be authorized for counties by the general law.' A search of the general law provisions has revealed no authority whereby a county is empowered to enact ordinances of this nature.

Further, it appears that the county cannot exercise such power under its zoning power. Although § 6-7-710 et seq., the Zoning Enabling Act, appear to be broad in scope it does not specifically grant the counties the power to regulate the sale of beer and wine. Under the view of the South Carolina Supreme Court, as expressed in Dunbar v. City of Spartanburg, 266 S.C. 113, 221 S.E.2d 848, the absence of language clearly indicating that the legislature intended that counties could regulate the sales of beer, such power cannot be assumed to be authorized by the General Assembly.

In addition, I have attached a 1976 Op. Atty. Gen. No. 4271, p 88. This opinion concludes that a municipality may not enact an ordinance prohibiting the sale of beer. The reasoning therein appears equally applicable to the question presented. The General Assembly has authorized the South Carolina Alcoholic Beverage Control Commission to determine the suitability of locations for the sale of cold beer or wine for on premises consumption. See, §§ 61-9-320(6) and 61-9-340, Code of Laws of South Carolina, 1976, as amended. The state's regulatory scheme permits input by interested persons who oppose licensure. R7-90, Rules and Regulations of the Alcoholic Beverage Control Commission. A county ordinance designating certain places as 'unsuitable' for the consumption of beer may create an impermissible conflict with the state's regulatory scheme for beer and wine.

***2** In conclusion, it appears that the enactment of an ordinance prohibiting the sale and consumption of beer in certain areas of the county is beyond the authority of the County Council.
Very truly yours,

Edwin E. Evans
Senior Assistant Attorney General

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