1981 WL 158047 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
November 18, 1981

***1 RE: Act No. 118 of 1969**

The Honorable Irene K. Rudnick
Member
House of Representatives
Box 544
Aiken, South Carolina 29801

Dear Representative Rudnick:
You have asked the opinion of this office, whether Act No. 118 of 1969, Acts and Joint Resolutions, is constitutional. In reviewing the constitutionality of an act, it is presumed that the act is valid and all doubts and uncertainties arising must be resolved in favor of the validity of the act. An act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539; Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777. Acknowledging these recognized principles, it is the opinion of this office that Act No. 118 of 1969, is constitutional.

Act 118 is special legislation prohibiting the sale and consumption of beer and wine during certain hours only in Aiken County. Subpart (IX) of Article III, § 34 of the South Carolina Constitution, 1895 as amended, prohibits the enactment of local or special laws '[i]n all other cases where a general law can be made applicable . . ..' The inquiry thus becomes whether a general law can be made applicable to the situation in Aiken County.

The Court has noted in reviewing legislation alleged to be contrary to Article III, § 34 that:
The language of the Constitution which prohibits a special law where a general law can be made applicable, plainly implies that there are or may be cases where a special Act will best meet the exigencies of a particular case, and in no wise be promotive of those evils which result from a general and indiscriminant resort to local and special legislation. There must, however, be a substantial distinction having reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded. The marks of distinction upon which the classification is founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation. [Cites omitted]. Shillito v. City of Spartanburg, 214 S.C. 11, 20, 51 S.E.2d 95.

The Court has further indicated that:
There may be a classification of counties provided it is based on a rational difference of situation or condition found in the counties placed in a different class. [Cite omitted]. Elliot v. Sligh, 233 S.C. 161, 103 S.E.2d 923, 926.

In the enactment of Act 118, the legislature identified eight (8) factual findings supportive of its reasoning that the problems associated with consumption of beer and wine in Aiken County are unique and in need of special legislation. The major emphasis of these findings is the proximity of Aiken County to populous Richmond County, Georgia, and the consumption problems occasioned by this proximity and the different laws governing consumption and the sale of beer and wine in South Carolina and Georgia. Giving the legislative findings the consideration they are due, it cannot be said that the legislature acted in an arbitrary or capricious manner in promulgating a special law restricting the hours beer and wine may be sold or consumed in Aiken County. Thus, it cannot be said that Act 118 is repugnant to Article III, § 34 of the South Carolina Constitution.

***2** Similarly, Act 118 is not repugnant to Article VIII, § 7 of the South Carolina Constitution. This provision took effect on March 7, 1973, and is 'inoperative as to legislation enacted prior' to that date. Neal v. Shealy, 261 S.C. 266, 199 S.E.2d 542.

In addition, with the exception of one (1) particular instance, there generally exist no irreconcilable conflict between Act 118 of 1969, and § 61-9-90, South Carolina Code of Laws. 1976, as amended. Section 61-9-90 was last amended in 1974, subsequent to the enactment of Act 118. While § 61-9-90 proscribes sales of beer and wine during certain Sunday hours, it does not address the hours beer may or may not be sold during week days, except as to sales by certain outlets licensed to sell 'minibottles'. [This 'minibottle' proviso therein will be discussed in the succeeding paragraph]. Thus, Act 118 speaks where § 61-9-90 remains silent and this additional regulation does not constitute a conflict therewith. See, City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242; Arnold v. City of Spartanburg, 201 S.C. 490, 23 S.E.2d 735.

However, it must be noted that § 61-9-90 authorizes the sale of beer and wine on Sunday between the hours of 10:00 in the morning and 2:00 the following morning by certain non-profit organizations with limited membership, not open to the general public, who have obtained a 'minibottle' license pursuant to §§ 61-5-10, et seq. Act 118 prohibits all Sunday beer sales and, accordingly, is in direct conflict with § 61-9-90 in this instance only. Thus, insofar as Act 118 prohibits the sale of beer and wine by certain non-profit organizations possessing a 'minibottle' license on Sunday between the hours of 10:00 A.M. and 2:00 A.M. the following morning, it must be deemed repealed by implication by § 61-9-90.

In conclusion, it is the opinion of this office that Act 118 of 1969, is not clearly repugnant to either Article III, § 34 or Article VIII, § 7 of the South Carolina Constitution. It is further the opinion of this office that Act 118 is not repealed by implication except insofar as it prohibits Sunday beer sales by certain non-profit organizations licensed to sell 'minibottles' pursuant to §§ 61-5-10, et seq. In all other circumstances, Act 118 remains valid and enforceable.

Very truly yours,

Edwin E. Evans
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