

1981 WL 157983 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 28, 1981

*1 Thomas M. Boulware, Esquire
Attorney at Law
Post Office Box 248
Barnwell, South Carolina 29812

Dear Mr. Boulware:

With apologies for the delay, I am writing in response to your inquiry concerning a proposed municipal ordinance to prohibit the consumption of alcoholic beverages in public places such as streets, highways and parks within the municipality. I am enclosing copies of previous opinions from this Office which conclude that any municipal regulation of alcoholic beverages (except beer and wine) is unauthorized because the State has pre-empted the field. See, e.g., 1966-67 Ops.Atty.Gen. No. 2282; 1975 Ops.Atty.Gen. No. 4072. On the other hand, the South Carolina Supreme Court has declared that municipal regulation of beer consumption which does not conflict with State laws is valid. See, e.g., [City of Charleston v. Jenkins](#), 243 S.C. 205, 133 S.E.2d 242 (1963). The municipal 'home rule' legislation expressly grants traditional police power to South Carolina cities. § 5-7-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended; see also, S.C.CONST. art. VIII, § 17. Accordingly, while our Office has taken the position that municipal regulation of alcoholic beverage (other than beer and wine) consumption is unauthorized, there is authority for the opposite position. I would recommend that a declaratory judgment action be brought pursuant to [Sections 15-53-10 et seq.](#), CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, to obtain a definitive answer to your inquiry.

with kind regards,

Karen Lecraft Headerson
Senior Assistant Attorney General

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