

1982 WL 189452 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 4, 1982

*1 Ms. Carolyn K. Richardson
Administrative Assistant
Alcohol & Drug Abuse Committee
612 Gressette Building
Columbia, South Carolina 29202

Dear Carolyn:

You have asked on behalf of Senator J. Vern Smith, for advice and construction of Act No. 418 of 1982 Acts and Joint Resolutions [§ 61-9-61] and its applicability to certain situations.

I.

You have asked whether the Act makes it unlawful for a family [adults] at their home to serve beer to persons under age 18 who are unrelated to them. I would advise that the Act appears to make such conduct unlawful and subject to criminal penalties provided therein. The Act does not except from its proscriptive scope transfers of beer in a residence. Further, the adults in question would not be excepted under the provision 'except a spouse over the age of 18 years or a parent or guardian'. For informational purposes, I refer you to [§ 20-7-370, South Carolina Code of Laws, 1976](#), as amended, by Act No. 71 of 1981 Acts and Joint Resolutions. This section makes it unlawful for any minor under the age of 18 years to purchase or have in his possession beer or other beverages. In addition, see §§ 20-7-320, and 61-9-40.

II.

You have asked whether in the situation described above each transfer would constitute a separate offense. It appears from a reading of the Act that the General Assembly intended for each violation [or transfer] to be a separate criminal offense. The Act makes the transfer or giving to any person under the age of 18 years a crime.

III.

In addition, you have asked for guidance in construing the term guardian as used in this Act. Although 'guardian' has several legal definitions, 39 C.J.S. 'Guardian and Ward', § 1, it has been defined as:

One who legally has the care and management of the person or the estate, or both, of a child during his minority.

[Blackwell v. Vance Trucking Co., 139 F.Supp. 103 \(E.D.S.C., 1956\)](#), at 106, quoting from 28 C.J. 'Guardian and Ward' at 1058.

In addition, guardian is defined by statute in the South Carolina Children's Code [Act 71 of 1981 Acts and Joint Resolutions] to mean 'a person who legally has the care and management of a child'. [§ 20-7-30\(3\), South Carolina Code of Laws, 1976](#), as amended. This definition by its very term applies to §§ 20-7-320 and 360, provisions within the same chapter. Since § 61-5-61 pertains to the same subject matter as §§ 20-7-320 and 360 [persons under 18 possessing and consuming beer or wine] application of this statutory definition to § 61-5-61, would appear reasonable and consistent with legislative intent.

Several other jurisdictions have construed similar statutes in a variety of ways. See, i.e. [State v. Johnson \(S.D.\) 121 N.W. 785](#); [State v. Hughes, 3 Conn. Cir. 181, 209 A.2d 872](#); [State v. Jones, 46 Texas C.R.R. 517, 81 S.W. 49](#); contra, [State v. Kirby, \(Oh.\) 292 N.E.2d 336](#). Accordingly, you are advised that a guardian as used in § 61-5-61, may be construed in similar fashion to guardian as defined in § 20-7-30 of the Children's Code.

*2 With best wishes, I remain

Very truly yours,

Edwin E. Evans

Senior Assistant Attorney General

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