

1980 WL 121085 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 10, 1980

**\*1** Mr. Ralph Miller  
Assistant Chief of Police  
City of West Columbia  
Post Office Box 44  
West Columbia, South Carolina 29169

Dear Chief Miller:

In a letter to this Office you questioned whether a business in your area, which may be characterized as a food and general merchandise store, could operate on Sunday as described in your letter. You indicated that the store has several departments including a camera department, prescription department, a delicatessen, and full-time grocery department. You stated that on all days but Sunday the store operates as one entity but on Sunday the grocery department is 'separated' by lining up shopping carts the length of the grocery department. You indicated that the grocery department has three employees while over twelve employees are located in the remaining departments. You further indicated that at times some customers of the separated grocery department were asked to cross over to the other departments to be checked-out. Referencing the provision of Section 53-1-50, Code of Laws of South Carolina, 1976, which permits the '... sale of emergency food needs at ... grocery stores which do not employ more than three persons including the owners or proprietors at any one time ...', you have asked specifically whether the business may operate as above described on Sunday.

Obviously the referenced business is aware of the above statutory provision and has apparently construed such provision to limit not only a grocery store but a grocery department of a general merchandise store to three employees on Sunday. I question whether that is a proper interpretation especially since you state that the business on all days but Sunday operates as a single business entity. It appears that to uphold the store's manner of operating necessitates a determination that the store is not functioning as a grocery store per se and thus is not limited to the three employee rule provided by the referenced section. You stated that you were not alleging that the store is violating the law by selling prohibited items.

In [State v. Smith](#), 247 S.E.2d 331 (1978), the appellant managed a grocery store which employed six persons on Sunday. Three of the employees were specifically assigned to a delicatessen which was included in the store. The delicatessen had its own cash register and separate business license. The appellant challenged the jury charge of the judge which was:

'(i)f a bakery, restaurant, delicatessen or similar operation is located within a grocery store and operates simultaneously with the operation of the grocery store, it shall not be considered as a separate business.' 247 S.E.2d at 333.

The South Carolina Supreme Court, while holding that the 'three employee rule' for grocery stores was not discriminatory between small grocery stores and the larger grocery stores, determined that in that instance the delicatessen operation was a part of the overall store operation and the jury would not have been warranted in finding that the delicatessen functioned as a separate business entity. Thus the Court upheld the appellant's conviction for violating the blue laws by employing more than three persons on Sunday in his grocery store.

**\*2** As to the factual situation presented by your letter, it does not appear that the [Smith](#) decision is dispositive. In [Smith](#), the Court recognized that the grocery store operated by the appellant was a 'typical supermarket.' I seriously question whether the store you referenced would be considered to be a 'typical supermarket' in that it includes a prescription department and a camera department along with a delicatessen and grocery department. Obviously the camera and prescription departments

could be operated on Sunday inasmuch as drugs, medicinal supplies, film, batteries, and flashbulbs may legally be sold on Sunday. Thus, if it would be determined that the store is not a grocery store and is not restricted by the three employee rule, the number of employees in the store is irrelevant.

Recognizing the ambiguous situation as to the business referenced, this Office is unable to provide a firm opinion. Such a finding should more appropriately be made by a court. As you are aware, criminal penalties are provided for a violation of this State's blue laws. Furthermore, by [Section 53-1-80, Code of Laws of South Carolina](#), 1976, a law-enforcement officer may seek injunctive relief enjoining a violation of the blue laws. Considering the available remedies, I suggest you contact your city attorney as to how you may wish to proceed.

With best wishes.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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