

1980 WL 121051 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 16, 1980

***1 RE: Evidence Opinion**

The Honorable Nicholas P. Sipe
Executive Director
South Carolina Alcoholic Beverage
Control Commission
1205 Pendleton Street
Columbia, South Carolina

Dear Nick:

You have recently asked the opinion of this office concerning the admissibility of an Alcoholic Beverage Control agent's testimony in an administrative hearing with regard to a substance being an alcoholic beverage. The precise question which you have posed does not seem to have been answered in this state. Nevertheless, it is the opinion of this office that the agent's testimony as to the substance being alcoholic in nature would be admissible.

The rules of evidence as applied in civil cases in the Court of Common Pleas are followed in contested cases before administrative bodies. [§ 1-23-330, Code of Laws of South Carolina](#), 1976, as amended. The general rule in South Carolina as to opinion testimony is that opinions are presumptively admissible rather than inadmissible. Dreher, Evidence Law in South Carolina, p. 16. "The intoxicating quality of a beverage may be proved by the testimony of any witness, although technically not an expert, provided he is shown to have had personal experience or made observation such as enable him to form an opinion, and it is generally held that testimony as to the unlawful content of liquor, based on taste, sight, and smell is admissible in evidence. For example, a witness familiar with the taste and smell of whiskey can give opinion evidence as to whether the beverage sold and drunk was whiskey." 45 Am.Jur.2d Intoxicating Liquors, § 376. See also, [78 A.L.R. 439; Stoccko v. United States, 1 F.2d 612 \(3rd Cir., 1924\)](#). Thus, based on the weight of authority, it is the opinion of this Office that this type of testimony would be admissible in an administrative hearing.

Very truly yours,

Edwin E. Evans
Assistant Attorney General

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