1979 S.C. Op. Atty. Gen. 60 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-43, 1979 WL 29049

Office of the Attorney General

State of South Carolina
Opinion No. 79-43
March 9, 1979

***1 SUBJECT: Alcoholic Beverages, Malt Beverages**

The Legislative Regulation of beer and wine as a 'nonalcoholic and nonintoxicating beverage' does not conflict with Article VIII–A, Constitution of South Carolina, 1895, as amended.

TO: Nicholas P. Sipe, Esquire
Staff Member of the Governor's
Task Force on Alcoholic Beverages

QUESTION:

Does the Legislative definition of beer and wine as a 'nonalcoholic and nonintoxicating beverage' violative Art. VIII–A, Constitution of South Carolina, 1895, as amended?

STATUTES AND CASES:

1933, 1934, 1935, 1972, 1973, 1975, Acts of the General Assembly of South Carolina; §§ 61–5–10, et seq. and 61–9–10, et seq., Code of Laws of South Carolina, 1895 as amended; Art. VIII–A Constitution of South Carolina, 1895, as amended; State ex rel McLeod v. Edwards, et al., 269 S.C. 75, 236 S.E.2d 406; Miller v. Farr, 243 S.C. 342, 133 S.E.2d 838; State v. Turner, 198 S.C. 499, 118, S.E.2d 376; City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242; Arnold v. City of Spartanburg, 201 S.C. 523, 23 S.E.2d 735; Smith v. Pratt, 258 S.C. 504, 189 S.E.2d 301; Taylor v. Lewis, 261 S.C. 168, 198 S.E.2d 801; People's National Bank v. South Carolina Tax Commission, 250 S.C. 187, 156 S.E.2d 769; Elliot v. McNair, 250 S.C. 75, 156 S.E.2d 421; Gebhardt v. McGinty, 243 S.C. 495, 134 S.E.2d 749; Reese v. Talbert, 237 S.C. 356, 117 S.E.2d 375; 16 C.J.S. Constitutional Law §§ 1 et seq.; 16 Am. Jur.2d Constitutional Law §§ 1 et seq.; Hibbard, 'History of South Carolina Liquor Regulation' 19 C.L.R. 157.

DISCUSSION:

The inquiry presented concerns whether the Legislature's classification of beer and wine as a 'nonalcoholic and nonintoxicating beverage', § 61–9–10, Code of Laws of South Carolina, 1976, as amended, and the resulting regulatory scheme which in certain circumstances permits consumption of beer and wine on the premises where it is sold is violative of Art. VIII–A of the Constitution of South Carolina, 1895, as amended? Analysis by this Office reveals that it is not.

To ascertain whether or not the present statutory regulatory scheme of beer and wine violates Art. VIII–A of the Constitution of South Carolina, 1895, as amended, one must first examine that provision. The State Constitution is a limitation of the Legislature's powers not a grant, and, thus, if Art. VIII–A does not prohibit the legislative regulatory scheme then it may stand. CF. People's National Bank v. South Carolina Tax Commission, 250 S.C. 187, 156 S.E.2d 769; Elliot v. McNair, 250 S.C. 75, 156 S.E.2d 421.

Article VIII–A generally provides that the General Assembly may regulate the sale and retail of alcoholic liquors in any manner it deems 'expedient.' Three provisos appear to limit the Legislature's general power therein. The first two are apparently not in conflict with the Legislative scheme dealing with beer and wine. [1] The third proviso reads as follows:

***2** . . . Provided, further, that licenses may be granted to sell and consume alcoholic liquors and beverages in sealed containers of two ounces or less in businesses which engage primarily and substantially in the preparation and serving of meals or furnishing of lodging or on premises of certain nonprofit organizations with limited membership not open to the general public, during such hours as the General Assembly may provide.

The above proviso became effective on March 28, 1973, subsequent to approval by the public on November 7, 1972. This amendment is commonly known as the 'mini-bottle law,' and permits liquor by the drink in qualified circumstances. The General Assembly passed Act 1062 of 1972 Acts of South Carolina (§ 61–5–10 et seq., Code of Laws of South Carolina, 1976, as amended) prior to the submission of amended Art. VIII–A to the public. Said Act was contemporary with the 'mini-bottle' proviso and was intended to implement the amendment. Perusal of the Act reveals a clear legislative intent to exclude beer and wine from its application. Thus, it is obvious the General Assembly never considered that the 1972 amendment included beer or wine. This contemporary construction of Art. VIII–A by the Legislature is very significant. CF. Gebhardt v. McGinty, 243 S.C. 495, 134 S.E.2d 749; Reese v. Talbert, 237 S.E. 356, 117 S.E.2d 375. Further scrutiny reveals several other factors indicative of legislative and public intent to remove beer and wine from the language of Art. VIII–A.

The inclusion of beer and wine in the 1972 amendment to Art. VIII–A would create an absurd and impractical consequence. Thus, such construction should be avoided. Consumption in two ounce containers is contrary to the public's understanding of beer and wine consumption. Thus, further evidence that the 1972 amendment was not applicable to beer and wine.

It cannot be gainsaid that the public was ignorant of the classification of beer and wine as a nonalcoholic and nonintoxicating beverage when they ratified Art. VIII–A in 1972, and again in 1975 (Act #32 of 1975 Acts of South Carolina).

In 1933, the Legislature initially defined beer and wine of certain alcoholic proportion as a 'nonalcoholic and nonintoxicating beverage.' See, Act #228 of 1933 Acts of South Carolina. This legislative classification has existed consistently for over forty years and since 1935, there has existed dual regulatory schemes for beer and wine and alcoholic liquors and beverages which have continued to exist separate and distinct to the present. See, Act #232 of 1985 Acts of South Carolina. Not only has the public acquiesced in this separate regulatory scheme, their affirmance of this legislative construction has been manifested in various methods. Public referendums were conducted in 1934, 1936 and 1940, concerning the legislative regulation of alcoholic beverages and beer and wine. In addition, the regulation of beer and wine under a separate classification as 'nonalcoholic and nonintoxicating' has been the subject of judicial scrutiny on several occasions. [2] Most notably of these decisions are State v. Turner, 198 S.C. 499, 18 S.E.2d 37, and Arnold v. City of Spartanburg, 201 S.C. 523, 23 S.E.2d 735. The Supreme Court therein, noted the Legislature's definition of beer and wine and acknowledged that it was for the purpose of separate regulation and licensure. And in Arnold, supra, the Supreme Court was equally aware of the then existing Art. 8 § 11 (predecessor to present Art. VIII–A), and no conflict between the two was acknowledged.

***3** Thus, when Art. VIII–A was ratified by the public in 1972 and again in 1975, it must be recognized that the terms 'alcoholic liquors' and 'alcoholic beverages' did not connote beer and wine. Article VIII–A as reenacted, includes therein the meanings previously attributed to its term by the legislature, the public and the courts. State ex rel McLeod v. Edwards, et al., 269 S.C. 75, 236 S.E.2d 406; Miller v. Farr, 243 S.C. 342, 133 S.E.2d 838; 16 Am. Jur.2d Constitutional Law § 80; 16 C.J.S. Constitutional Law § 35.

CONCLUSION

Accordingly, Art. VIII–A, though it appears to restrict the Legislature's actions concerning alcoholic liquors and beverages, does not conflict with the present regulatory scheme concerning beer and wine. Beer and wine at the time of reenactment of Art. VIII–A was not construed as an alcoholic liquor or beverage and, thus, not controlled therein.

Edwin E. Evans
Assistant Attorney General

Footnotes

1 The first proviso relates to restrictions of retail liquor stores, and the second proviso relates to the authority of municipalities to issue alcohol beverage licenses.

2 State v. Turner, 198 S.C. 499, 18 S.E.2d 37; City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242; Arnold v. City of Spartanburg, 201 S.C. 523, 23 S.E.2d 735; Smith v. Pratt, 258 S.C. 504, 189 S.E.2d 301; Taylor v. Lewis, 261 S.C. 168, 198 S.E.2d 801.

1979 S.C. Op. Atty. Gen. 60 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-43, 1979 WL 29049