

1980 WL 120876 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 16, 1980

*1 Honorable Jack Weatherly
Sheriff
Marlboro County
Bennettsville, South Carolina 29512

Dear Sheriff Weatherly:

You have recently asked the opinion of this Office as to whether the Marlboro County Council may pass a county ordinance prohibiting the sale of beer and wine in Marlboro County after 2:00 a.m. Monday through Friday.

It is generally said that municipalities have the authority to regulate and restrict the sale of beer and wine within their city limits as the particular circumstances warrant. See, [§ 5-7-30, Code of Laws of South Carolina \(1976\)](#), as amended; [City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242](#). However, under the Home Rule Act, there has been no express grant of the police power to the counties. Section 4-9-30, *supra*; 1975 Atty. Gen. Op. No. 4118, p. 192.

Further examination of the Home Rule Act reveals no authority for a county to undertake such an action. Subsection (14) of this section empowers counties to 'enact ordinances for the implementation and enforcement of the powers granted in this section . . .'. In reviewing the other provisions of the Home Rule Act, there is no specific authority for the counties to regulate the hours of sale of beer and wine. Therefore, any county authority for enacting ordinances regulating sale under the Home Rule Act would come from subsection (17) of § 4-9-30, which grants counties authority 'to exercise such other powers as may be authorized for counties by the general Law.' A search of general law provisions has revealed no authority whereby a county is empowered to enact ordinances of this nature.

Additionally, it appears that the county could not exercise such power under its zoning power. Although §§ 6-7-710, *et seq.*, the Zoning Enabling Act, appears to be broad in scope, it does not specifically grant the counties the power to regulate the time of sale of beer and wine. Under the view of the South Carolina Supreme Court, as expressed in [Dunbar v. City of Spartanburg, 266 S.C. 113, 221 S.E.2d 848 \(1976\)](#), in the absence of language clearly indicating that the legislature intended that counties could regulate the time of sale for beer such power has not been authorized by the General Assembly.

In conclusion, it appears as if the action of the Marlboro County Council in enacting an ordinance prohibiting the sale of beer and wine in Marlboro County after 2:00 a.m. Monday through Friday, was beyond the authority of the County Council.

Very truly yours,

Edwin E. Evans
Assistant Attorney General

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