

1977 WL 37204 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 4, 1977

*1 Section 4-78(2), Code of Laws of South Carolina, 1962, as amended, prohibits retail liquor dealers from owning or possessing alcoholic liquors in containers containing 6.8 ounces.

Kenneth E. Allen
Director
S.C. Alcoholic Beverage Control Commission

QUESTION PRESENTED:

May a retail liquor dealer sell alcoholic liquors in containers containing 6.8 ounces?

AUTHORITIES:

Sections 66-151, et seq., Code of Laws of South Carolina, 1962, as amended;

Section 4-78, Code of Laws of South Carolina, 1962, as amended;

Section 1 of Article 8A of the Constitution of South Carolina, 1895, as amended;

Section 11 of Article 8 of the Constitution of South Carolina, 1895 (repealed);

[Winters v. Pratt](#), 258 S.C. 397, 189 S.E.2d 7 (1972);

[Mitchell v. Mitchell](#), 266 S.C. 196, 222 S.E.2d 499 (1976);

[Martin v. Ellisor](#), 266 S.C. 377, 223 S.E.2d 415 (1976);

[Investors Premium Corp. v. S.C. Tax Commission](#), 260 S.C. 13, 193 S.E.2d 642 (1973);

[Ferguson v. Finch](#), 310 F. Supp. 1251 (D.C.S.C. 1970);

[Southern Fire Insurance Co. v. S.C. Tax Commission](#), 253 S.C. 407, 171 S.E.2d 355 (1969);

[Home Building & Loan Association v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 139 (1937).

DISCUSSION:

Retail liquor dealers are prohibited by statute from possessing alcoholic liquors in containers of less than one-half pint.

No retail dealer shall:

(2) Own or keep in his possession any alcoholic liquors in separate containers less than one-half pint; Section 4-78(2), Code of Laws of South Carolina, 1962, as amended.

The above prohibition is absolute, except in its application to alcoholic liquors in sealed containers of two(2) ounces or less. This prohibition was originally found at Article 8, § 11, Constitution of South Carolina, 1895, which has been repealed and replaced by Article 8A, § 1 of the amended Constitution. The amended constitutional provision does not address itself to the one-half pint prohibition. Therefore, the applicable statutory law will be controlling of the question.

The courts of this state have oftentimes recognized that a court can neither legislate nor construe a statute which is clear and unambiguous. [Mitchell v. Mitchell](#), 266 S.C. 196, 222 S.E.2d 499; [Investors Premium Corp. v. S.C. Tax Commission](#), 260 S.C. 13, 193 S.E.2d 642; [Ferguson v. Finch](#), 310 F.Supp. 1251 (D.C.S.C. [Southern Fire Insurance Co. v. S.C. Tax Commission](#), 253 S.C. 407, 171 S.E.2d 355; [Home Building & Loan Association v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 139 (1937). The Supreme Court has previously recognized the clarity of a prohibition of sales of alcoholic liquors in containers of less than one-half pint. [Winters v. Pratt](#), 258 S.C. 397, 189 S.E.2d 7 (1972). The literal terms of the statute in question are precise and unambiguous, and there is no room for construction.¹

A quantity of alcoholic liquors bottled in a container containing 6.8 ounces is less than one-half pint and therefore, falls within the clear proscription of subsection 2 of § 4-78 of the amended Code. Accordingly, possession and ownership of alcoholic liquors in containers containing 6.8 ounces by retail liquor dealers is prohibited.

***2** Edwin E. Evans
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Footnotes

- ¹ It should be noted that South Carolina has previously recognized the metric system of weights and measurements as well as the system in customary use. Section 66-153, Code of Laws of South Carolina, 1962, as amended.

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