

1977 S.C. Op. Atty. Gen. 246 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-317, 1977 WL 24656

Office of the Attorney General

State of South Carolina

Opinion No. 77-317

October 11, 1977

\*1 TO: Nicholas P. Sipe  
Hearing Officer & Legal Counsel  
South Carolina Alcoholic Beverage Control Commission

### QUESTIONS

Is R7-88 a valid rule?

Are agreements between the Commission and the Applicant to restrict hours for the sale of beer and wine and to proscribe on premises beer consumption valid?

If there is a violation of the stipulated agreement, must the Commission fail to renew the beer and wine permit? The questioned agreement includes the following:

If a permit is issued to me/us to sell beer and wine at my/our establishment and this agreement is broken by me/us, I/we do hereby agree to voluntarily surrender my/our beer and wine permit without a hearing as provided by law to any Agent of the South Carolina Alcoholic Beverage Control Commission who finds that I/we have violated any of the terms of this agreement.

### AUTHORITIES

§§ 61-1-70, 61-1-80, 61-3-770, 61-9-320, Code of Laws of South Carolina, 1976, as amended;

[Cole v. Manning](#), 240 S.C. 260, 125 S.E.2d 621;

[Faile v. S. C. Employment Security Commission](#), 267 S.C. 536, 230 S.E.2d 219;

[Banks v. Batesburg Hauling Co., et al.](#), 202 S.C. 273, 24 S.E.2d 496;

[Davis v. Query, et al.](#), 209 S.C. 41, 39 S.E.2d 117;

[Fowler v. Lewis](#), 260 S.C. 54, 194 S.E.2d 191;

[Terry v. Pratt](#), 258 S.C. 177, 187 S.E.2d 884;

[Smith v. Pratt](#), 258 S.C. 504, 189 S.E.2d 301;

73 C.J.S. § 93 'Public Admin. Bodies and Procedure'.

### DISCUSSION

The Commission has the statutory authority to promulgate rules and regulations necessary to assist in the execution of the duties of the Commission. Section 61-1-70 of the 1976 Code. Pursuant to that authority the Commission has promulgated R7-88 which reads as follows:

Any stipulation and/or agreement which is voluntarily entered into by an applicant in writing for a beer and wine permit between the applicant and the South Carolina Alcoholic Beverage Control Commission, if accepted by the Commission, will be incorporated into the basic requirements for the enjoyment and privilege of obtaining and retaining the beer and wine permit and which shall have the same effect as any and all laws and any and all other regulations pertaining to the effective administration of beer and wine permits and permittees.

In the event that evidence is presented to this Commission that any part of the stipulation or agreement is or has been knowingly broken by the permittee will be a violation against the permit and shall constitute sufficient grounds to suspend or revoke said beer and wine permit.

The authority to implement administrative rules is well recognized in South Carolina. [Cole v. Manning](#), 240 S.C. 260, 125 S.E.2d 621; [Faile v. S. C. Employment Security Commission](#), 267 S.C. 536, 230 S.E.2d 219; [Banks v. Batesburg Hauling Co., et al.](#), 202 S.C. 273, 24 S.E.2d 496; [Davis v. Query, et al.](#), 209 S.C. 41, 39 S.E.2d 117; 73 C.J.S. § 93 'Public Admin. Bodies and Procedure'. Such rules must not alter or amend the statutory law; they must be reasonable in their requirements and must implement statutory provisions. [Banks, supra](#).

\*2 Section 61-9-320 of the 1976 Code authorizes the Commission to issue retail beer and wine permits if the Commission is satisfied that the requisites cited therein are met. The qualification provisions are broadly categorized and leave with the Commission a wide range of discretion in determining if they have been satisfied. [CF. Fowler v. Lewis](#), 260 S.C. 54, 194 S.E.2d 191; [Terry v. Pratt](#), 258 S.C. 177, 187 S.E.2d 884. As such, reasonable rules and regulations promulgated to assist the Commission in determining the qualifications of an applicant for a beer and wine permit would generally appear to be valid if they do not alter the statutory law. [See, Davis v. Query, supra](#) at page 50, 'lawful to delegate discretionary authority, especially to make rules and regulations relating to enforcement of the law.' R7-88 as promulgated assists the Commission in determining if the prescribed requisites of § 61-9-320 have been satisfied, and therefore, is apparently valid for that purpose.

An agreement entered into pursuant to said Rule would be valid if it was reasonable in its attempt to implement the law and did not contravene statutory provisions. The particular agreements questioned are whether or not the applicant may stipulate to limit the hours of operation of a licensed premises and whether or not the applicant may stipulate to sell beer and wine to go only. Both stated agreements apparently assist the Commission in enforcing § 61-9-320(6) which provides that the location be a 'proper one for the sale of beer and wine.' Therefore, they would appear to be valid agreements.

The second paragraph of R7-88 authorizes the Commission to suspend or revoke a permit upon a showing that the agreement has been violated. To withstand challenge, that paragraph would have to be interpreted consonant with § 61-1-80 of the 1976 Code which provides that the Commission shall impose a monetary penalty in lieu of revocation of a permit in all but a few specified instances and with § 61-3-770 of the 1976 Code which provides that no license shall be revoked without the license holder being given an opportunity for a hearing. The Court in [Smith v. Pratt](#), 258 S.C. 504, 189 S.E.2d 301, concluded that § 61-1-80 applies to renewal applications as well as revocation proceedings. As such, it appears that in the fact situation presented, the agreement to voluntarily surrender the beer and wine permit without a hearing is invalid. It also appears that the Commission would have to impose a monetary penalty in lieu of nonrenewal for a proven violation.

## CONCLUSIONS

R7-88 is a validly promulgated rule of the Commission.

An agreement to sell beer and wine off premises only, or an agreement to limit the hours during which beer and wine can be sold would fall within the discretion of the Commission in implementing statutory provisions regarding whether or not a location is a proper place to sell beer and wine, and therefore, such agreements are enforceable pursuant to R7-88.

\*3 An agreement entered into pursuant to R7-88 could not alter the applicability of §§ 61-3-770 or 61-1-80, therefore, the provision of the agreement regarding the surrender of the license (permit) without hearing is unenforceable.

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