



ALAN WILSON
ATTORNEY GENERAL

May 6, 2016

Mary C. McCormac, Esquire
Legal Counsel for City of Clemson
Post Office Box 1535
Clemson, South Carolina 29633

Dear Ms. McCormac:

On behalf of the City of Clemson, you have requested the opinion of this Office pertaining to S.C. Code Ann. § 61-6-2010 (2009 & Supp. 2015). This Section concerns the issuance of temporary permits by the Department of Revenue, authorized through referendum, for the possession, sale, and on-premises consumption of alcoholic liquors by the drink and the on-site sale of beer and wine for off-premises consumption. These permits are often referred to as seven-day permits, Sunday sales permits, and local option permits.

In regards to the City of Clemson, you have provided us with the following background:

In November 2014, the City of Clemson held a referendum solely on the question posed in S.C. Code Ann. § 61-1-2010(C)(1)(a). The question asked whether to allow the issuance of temporary permits for the sale of alcoholic liquors by the drink for on-premises consumption. The majority of the qualified electors voting in the referendum answered in the affirmative.

The City of Clemson has now been asked to hold a referendum on the question posed in S.C. Code Ann. § 61-6-2010(C)(1)(c). This question asks whether to allow the issuance of temporary permits for the sale of beer and wine for off-premises consumption.

As S.C. Code Ann. § 61-6-2010(C)(2) (2009) provides that “[a] referendum for *this purpose* may not be held more often than once in forty-eight months” you ask whether the City of Clemson would be prohibited from holding a second referendum in the upcoming general election regarding temporary permits for the sale of beer and wine for off-premises consumption, pursuant to Section 61-6-2010(C)(1)(c), if a favorable referendum concerning only the sale of alcoholic liquors by the drink for on-premises consumption, pursuant to Section 61-6-2010(C)(1)(a), was held less than forty-eight months ago. S.C. Code Ann. § 61-6-2010(C)(2) (2009) (emphasis added); S.C. Code Ann. § 61-6-2010(C)(1)(a), (c) (2009).

You also point out that Section 61-6-2010(C)(4) provides, in relevant part, that “[i]n addition to the *petition method* of calling the referendum provided for in item (1) of this subsection, a county or municipal governing body *by ordinance* may also call the referendum.”

S.C. Code Ann. § 61-6-2010(C)(4) (2009) (emphasis added). Therefore, you ask “[d]oes the phrase ‘this purpose’ in S.C. Code Ann. § 61-6-2010(C)(2) operate to prohibit the City from holding a referendum on the question in S.C. Code Ann. § 61-6-2010(C)(1)(c) before the expiration of 48 months, without regard to whether the question is placed on the ballot *via petition or via ordinance*” or “does S.C. Code Ann. § 61-6-2010(C)(4) allow the City to place the referendum question posed by S.C. Code Ann. § 61-6-2010(C)(1)(c) on the ballot *by ordinance*, without regard to the 48-month period set forth by S.C. Code Ann. § 61-6-2010(C)(2)?” (Emphasis added). Our analysis follows.

Law / Analysis

As your questions concern the statutory interpretation of S.C. Code Ann. § 61-6-2010, we first note that in construing any statute, the primary objective is to ascertain and effectuate the intent of the legislature. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 37, 267 S.E.2d 424, 425 (1980). Words used in statutes should be given their plain and ordinary meanings and applied literally in the absence of ambiguity. McCullum v. Snipes, 213 S.C. 254, 266, 49 S.E.2d 12, 16 (1948). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will” and “courts are bound to give effect to the expressed intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

The Legislature is presumed to have fully understood the meaning of the words it used in a statute, and unless the meaning is vague or indefinite, courts presume that the legislature intended to use the words it has chosen in their ordinary and common meaning or in their well defined legal sense. Rorrer v. P.J. Club, Inc., 347 S.C. 560, 570, 556 S.E.2d 726, 731 (Ct. App. 2001). In addition, “there is a basic presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.” Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997).

It is also well understood that statutory provisions do not stand alone but must be read in the context of the statutory scheme as a whole. Hinton v. South Carolina Dep’t of Prob., Parole and Pardon Servs., 357 S.C. 327, 333, 592 S.E.2d 335, 338 (Ct. App. 2004). Further, the statutory language in question must “be read in a sense which harmonizes with its subject matter and accords its general purpose.” Multi-Cinema, Ltd. v. S.C. Tax Comm’n, 292 S.C. 411, 413, 357 S.E.2d 6, 7 (1987). Finally, “sections which are part of the same general statutory law of the state should be construed together and each given effect if it can be done by any reasonable construction.” Charleston County Sch. Dist. v. Leatherman, 295 S.C. 264, 267, 368 S.E.2d 76, 78 (Ct. App. 1988).

With these rules of statutory construction in mind, we turn to the relevant provisions of S.C. Code Ann. § 61-6-2010 (2009 & Supp. 2015), reading as follows:

(A) In addition to the provisions of Section 61-6-2000, the department may issue a temporary permit to allow the possession, sale, and consumption of alcoholic liquors by the drink. This permit is valid for a period not to exceed twenty-four

hours and may be issued only to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for sales.

...

(C)(1) A permit authorized by this section may be issued only in those counties or municipalities where a majority of the qualified electors voting in a referendum vote in favor of the issuance of the permit. The county or municipal election commission, as the case may be, shall conduct a referendum upon petition of at least ten percent but not more than seven thousand five hundred qualified electors of the county or municipality, as the case may be. . . . The question on the ballot shall be one of the following:

- (a) 'Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors by the drink to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for consumption-on-premises sales?' or
- (b) "Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors by the drink to bona fide nonprofit organizations and business establishments authorized to be licensed for consumption-on-premises sales and to allow for the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?" or
- (c) in the case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993, the question may be "Shall the Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales."

(2) A referendum for this purpose may not be held more often than once in forty-eight months.

...

(4) In addition to the petition method of calling the referendum provided for in item (1) of this subsection, a county or municipal governing body by ordinance may also call the referendum. Upon receipt of a copy of the ordinance filed with the county or municipal election commission at least sixty days before the date of the next general election, the commission shall conduct a referendum in the manner provided in this section at the general election. The provisions of this item are in addition to the authority of a municipal governing body to call for a referendum under the circumstances enumerated in subsection (D).

...

(E) Temporary permits for the sale of beer and wine for off-premises consumption authorized to be issued in a county or municipality pursuant to the referendum provided for at that time may continue to be issued or reissued without the requirement of a further referendum.

S.C. Code Ann. § 61-4-510, titled “Special retail beer and wine permits,” is also essential to our analysis. In pertinent part, it provides as follows:

(A) In counties or municipalities where *off-premises beer and wine permits are specifically authorized to be issued pursuant to Section 61-6-2010*, in lieu of the retail permit fee required pursuant to Section 61-4-500, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-4-120, 61-4-130, and 61-4-140. The annual fee for this special retail permit is one thousand dollars.

S.C. Code Ann. § 61-4-510 (2009) (emphasis added).

In addition to the language contained in the statutes themselves, we believe a review of the legislative history of what are now S.C. Code Ann. §§ 61-6-2010 (2009 & Supp. 2015) and 61-4-510 (2009 & Supp. 2015), is also necessary to answer your questions. S.C. Code Ann. § 61-5-180 was previously the statutory means available for counties and municipalities, by petition and subsequent referendum, to opt for the issuance of temporary permits for the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less (i.e. local options permits for “minibottles”). See Act 512, 1984 S.C. Acts 3097-98. As noted above, the current version of § 61-5-180 is now codified at Section 61-6-2010. The question that was to be placed on the ballot during the referendum pursuant to Section 61-5-180 had to “read substantially” as follows: “Shall the Alcoholic Beverage Control Commission be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for sales.” Id. at 3097. Section 61-5-180 also included the provision providing “[a] referendum for this purpose may not be held more often than once in forty-eight months.” Id. at 3098.

In regards to special retail beer and wine permits, before Section 61-4-510’s recodification, its prior version was found in the Code at Section 61-9-312. See Act No. 164, Part II § 55, 1993 S.C. Acts 1228-29. In a prior opinion of this Office dated October 7, 1994, we explained the requirements of Section 61-9-312 as follows:

Section 61-9-312 was adopted by the General Assembly as part of the 1993-94 Appropriation Act, Part II, § 55, Act No, 164 of 1993. Subsection A of that section is codified as § 61-9-312:

In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180, in lieu of the retail permit fee required pursuant to Section 61-9-310, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-9-90, 61-9-100, and 61-9-130. . . .

Not codified but equally as important, subsection C of that part of the Appropriations Act provides:

The special version of a retail beer and wine permit provided in Section 61-9-312 of the 1976 Code in subsection A, may be issued in counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180 only after the effective date of this section. In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180 as of the effective date of this section, county or municipal election commissions shall conduct a referendum upon petition, as provided in section 61-5-180, solely to determine if the special permits authorized in Section 61-9-312 are approved. If approved pursuant to the referendum provided in this subsection or pursuant to Section 61-5-180 after the effective date of this section, the special permits may be issued as provided in Section 61-9-312.

The effective date of these provisions was June 21, 1993.

Op. S.C. Att’y Gen., 1994 WL 649295 (Oct. 7, 1994).

In accord with the plain language of the statute as written above, our 1994 Opinion concluded that a prerequisite to the issuance of a special beer and wine permit under § 61-4-510 was a successful referendum pursuant to § 61-6-2010, concerning the issuance of temporary permits for the possession, sale, and consumption of alcoholic liquors. Id.; see also Op. S.C. Att’y Gen., 2001 WL 564584 (April 18, 2001) (discussing the October 7, 1994 opinion). Furthermore, we opined that if a referendum was held pursuant to § 61-6-2010 by a county or municipality on or before June 21, 1993, a second referendum must be held to determine if the special version of the beer and wine permit could be issued in that county or municipality. Id. Relying on the language of Part II, § 55, Act No. 164 of 1993, our October 7, 1994 opinion also concluded that a second referendum was required for the special beer or wine permit even if the referendum held pursuant to § 61-6-2010 was conducted after June 21, 1993. Id.

After our 1994 opinion was written, the Legislature amended Section 61-4-510 (formerly § 61-9-312) by Act 415 of 1996. Act No. 415, 1996 S.C. Acts 2475. As we explained in an opinion dated April 18, 2001:

Subsection (A) listed below and codified in § 61-4-510 was enacted as was subsection (B) below, even though not codified:

- (A) In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-6-2010, in lieu of the retail permit fee required pursuant to Section 61-4-500, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-4-120, 61-4-130, and 61-4-140. The annual fee for this special retail permit is one thousand dollars.
- (B) The special version of a retail beer and wine permit provided in subsection (A) may be issued in counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-6-2010 only after June 21, 1993. In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-6-2010 as of June 21, 1993, county or municipal election commissions must conduct a referendum upon petition, as provided in Section 61-6-2010, solely to determine if the special permits authorized in subsection (A) are approved. If approved pursuant to the referendum provided in this subsection or pursuant to Section 61-6-2010 after June 21, 1993, the special permits may be issued as provided in subsection (A).

Op. S.C. Att’y Gen., 2001 WL 564584 (April 18, 2001).

Upon the enactment of Act 415 of 1996, we modified our 1994 opinion discussed above on the basis that the General Assembly “clarified the situation concerning the issuance of special beer and wine permits in those counties or municipalities which have held or will hold the referendum pursuant to § 61-6-2010 after June 21, 1993.” Id. In light of this clarification, our 2001 opinion provided as follows: “it now seems clear that a successful referendum pursuant to § 61-6-2010 held after June 21, 1993, would be sufficient to allow a county or municipality to issue the special beer and wine permits provided for in S.C. Code Ann. § 61-4-510.” Id. In other words, if a county held a successful referendum on temporary permits for the possession, sale, and consumption of alcoholic liquors pursuant to Section 61-6-2010 after June 21, 1993, that referendum automatically authorized permits for the sale of beer and wine for off-premises consumption as well.

Since our 2001 opinion, the Legislature has amended both Sections 61-4-510 and 61-6-2010. Significant amendments were made by Act No. 70 of 2003. See Act 70 §§ 5, 16, 2003 S.C. Acts 828, 832. Specifically, Section 5 of Act 70 amended S.C. Code Ann. § 61-4-510(A), providing as follows:

[i]n counties or municipalities where off-premises beer and wine permits are specifically authorized to be issued pursuant to Section 61-6-2010, in lieu of the retail permit fee required pursuant to Section 61-4-500, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-4-

120, 61-4-130, and 61-4-140. The annual fee for this special retail permit is one thousand dollars.

Act 70 § 5, 2003 S.C. Acts 828 (emphasis added).

Furthermore, Section 16 of Act 70 revised the referendum questions contained in Section 61-6-2010, stating that the question on the ballot shall be one of the following:

‘Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty four hours to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for consumption-on-premises sales?’ or

‘Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments authorized to be licensed for consumption-on-premises sales and to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?’

Act 70 § 16, 2003 S.C. Acts 832 (emphasis added).

Act 70 of 2003, effective June 25, 2003, therefore added the requirement that seven-day permits may only be issued in counties or municipalities which have held referendums specifically authorizing off-premises beer and wine consumption permits, and revised the questions to be listed on the referendum ballot accordingly. As the Administrative Law Court explained in Piedmont Petroleum Corp. v. S.C. Dep't of Revenue,

[u]nder Act 70 of 2003, the Department no longer acts on an application for a Seven-Day Permit by determining whether a favorable referendum on minibottles has been obtained in the applicant's county or municipality. Rather, effective June 25, 2003, the General Assembly redirected the Department's focus to a determination of whether the applicant's location is within a county or municipality “where off-premises beer and wine permits are specifically authorized to be issued pursuant to Section 61-6-2010.

Piedmont Petroleum Corp. v. S.C. Dep't of Revenue, Docket No. 03-ALJ-17-0337-CC (S.C. Admin. Law Ct. July 20, 2004).

Finally, we point out that Act No. 139 of 2005 amended Section 61-6-2010 to “delete the references to alcoholic liquors ‘in sealed containers of two ounces or less’ [minibottles] and to allow a referendum for temporary permits for the sale of beer and wine.” Act No. 139, 2005 S.C.

Acts 1584. Specifically, as codified in 61-6-2010(C)(1)(c), a third possible referendum question was added, reading as follows:

in case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993, the question may be ‘Shall the Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?’

Act No. 139, 2005 S.C. Acts 1599.

Important to take away from the above legislative history, as of 2001, it was our opinion that Act 415 of 1996 clarified that if temporary permits are authorized to be issued pursuant to Section 61-6-2010 as of June 21, 1993, a separate referendum pertaining to the sale of beer and wine for off-premises consumption would have to be held for authorization of the same. However, where temporary permits were authorized to be issued pursuant to Section 61-6-2010 after June 21, 1993, a referendum held regarding special permits for alcoholic liquors for on-premises consumption pursuant to that Section automatically permitted special permits for sales of beer and wine for off-premises consumption. This interpretation appears to have been applicable from the passage of Act 415 of 1996 until the passage of Act 70 of 2003. As explained above, pursuant to Act 70 of 2003, special permits for the sale of beer and wine for off-premises consumption must now be specifically authorized pursuant to a referendum held under 61-6-2010. Thus, a referendum concerning special permits for the on-premises consumption of liquor by the drink no longer automatically permits the sale of beer and wine for off-premises consumption.

Turning now to your question of what the legislature meant to include in the requirement contained in Section 61-6-2010(C)(2) that “a referendum for this purpose may not be held more often than once in forty-eight months,” we look to the plain language of the referendum questions that can be used on the ballot. Section 61-6-2010(C)(1)(a) includes a question solely for the purpose special permits for the possession, sale, on-premises consumption of liquor by the drink. With amendments over time as referenced above, this question has always been included as a question to be asked when holding a referendum for this purpose. Section 61-6-2010(C)(1)(b), added in 2003, asks two questions regarding authorization of special permits for the on-premises consumption of liquor by the drink and the sale of beer and wine for off-premises consumption together. Finally, Section 61-6-2010(C)(1)(c), the third possible referendum question added in 2005, pertains to special permits for the sale of beer and wine for off-premises consumption “*in case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993.*”

We recognize two separate referenda are currently required to be held for on-premises consumption of liquor by the drink and the sale of beer and wine for off-premises consumption, and, therefore, it could certainly be argued that two separate purposes exist for interpretation of the forty-eight month waiting requirement. However, as the plain language of the referendum questions read, it is our opinion that the referendum question contained in Section 61-6-

2010(C)(1)(c) would not apply to the City of Clemson. This is because the plain language of Section 61-6-2010(C)(1)(c), permitting a referendum solely on the question of special permits for the sale of beer and wine for off premises consumption, makes clear that such question applies only “in case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993.” As we relayed above, Act 415 of 1996 clarified that if temporary permits are authorized to be issued pursuant to Section 61-6-2010 as of June 21, 1993, a separate referendum pertaining to off-premises beer and wine permits would have to be held for authorization of the same. Accordingly, it is our opinion that a court would interpret the referendum question listed in Section 61-6-2010(C)(1)(c) as only applying to counties or municipalities having held a successful referendum in regards to sales for on-premises consumption of liquor as of June 21, 1993 because a separate referendum for Sunday sales of beer and wine for off-premises consumption would be required. Therefore, if holding a referendum pursuant to Section 61-6-2010(C)(1)(c), the questions contained in Sections 61-6-2010(C)(1)(a) and (b) would not be relevant to that county or municipality because special permits for on-premises consumption of liquor would have already been passed.

This interpretation appears to be strengthened by Section 61-6-2010(E), providing that “[t]emporary permits for the sale of beer and wine for off-premises consumption authorized to be issued in a county or municipality pursuant to the referendum provided for at the time may continue to be issued or reissued without the requirement of a further referendum.” S.C. Code Ann. § 61-6-2010(E) (2009) (effective April 8, 2006 upon the passage of No. 259, 2006 S.C. Acts 2201). Based on the above history, we believe this section would likely be interpreted as applying from the period that Act 416 of 1996 went into effect to the passage of Act 70 of 2003.

Again, under Act 416 of 1996, the Legislature clarified that a referendum held regarding special permits for on-premises consumption of liquor pursuant to Section 61-6-2010 after June 21, 1993 automatically authorized counties or municipalities to issue temporary permits for the sale of beer and wine for off-premises consumption. We believe this continued until Act 70 of 2003 passed, where the Legislature specified a referendum for the purpose special permits for the sale of beer and wine for off-premises consumption must be “specifically authorized to be issued pursuant to Section 61-6-2010.” S.C. Code Ann. § 61-4-510(A) (2009). Thus, in Section 61-6-2010(C)(1)(c) and (E) it appears the Legislature acknowledges the points in time where different requirements existed for the issuance of special permits for purposes of on-premises consumption of liquor by the drink and the sale of beer and wine for off-premises consumption than those requirements that exist today.

Furthermore, we must presume the Legislature fully understood the meaning of the words it was using in drafting Section 61-6-2010(C)(1)(c), and this Office, like a court, must interpret those words pursuant to their ordinary meaning or their well defined legal sense. We also must assume the Legislature had knowledge of the previous legislation and the interpretation of such legislation prior to the enactment of 61-6-2010(C)(1)(c). Therefore, it is our opinion that a court would find the City of Clemson could only hold a referendum pursuant to Section 61-6-2010(C)(1)(c) if temporary permits were authorized to be issued pursuant to Section 61-6-2010 as of June 21, 1993. To interpret otherwise would be to ignore the plain language of Section 61-6-2010(C)(1)(c). As you indicated a referendum for purposes of on-premises consumption of

liquor by the drink was recently held in the City of Clemson on November of 2014, we presume Section 61-6-2010(C)(1)(c) to be inapplicable to the City of Clemson.

Under this construction, the remaining referendum question applicable to the City of Clemson for purposes of determining whether special permits should be issued for the sale of beer and wine for off-premises consumption would be the question listed in Section 61-6-2010(C)(1)(b): “[s]hall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors by the drink to bona fide nonprofit organizations and business embellishments authorized to be licensed for consumption-on-premises sales and to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?” S.C. Code Ann. § 61-6-2010(C)(1)(b) (2009) (emphasis added). While we recognize the City of Clemson held a successful referendum under Section 61-6-2010(C)(1)(a) pertaining to the on-premises consumption of liquor by the drink in November of 2014, no other option including a referendum question allowing the sale of beer and wine for off-premises consumption applicable to the City of Clemson exists. Therefore, it is our opinion a new referendum must be held pursuant to 61-6-2010(C)(1)(b) if the City would like to present the question about the Sunday sales of beer and wine for off-premises consumption to its voters. Because a referendum for the purpose of on-premises consumption of liquor was held less than forty-eight months ago, and because it appears the referendum question listed in Section 61-6-2010(C)(1)(b) pertaining to the on-premises consumption of liquor by the drink and the sale of beer and wine for off-premises consumption must be listed together, we believe the forty-eight month waiting requirement would apply to the City of Clemson. We also believe failure to adhere to the forty-eight month requirement would subject the City to conducting a faulty referendum subject to future challenge.

We note that our conclusion comports with the trial court’s decision in Wal-Mart Supercenter v. South Carolina Dep’t of Revenue, No. 2005-CP-40-0902 (5th Cir. 2005). In pertinent part, the court specified that the referendum questions written by the Legislature in Act 70 of 2003 “set forth the language required on the ballot.” Id. Furthermore, in the instance that the specific question pertaining to the sale of beer and wine for off-premises consumption has not been presented to the voters, the court explained that “Petitioners’ hands are not tied by Act 70 of 2003. Petitioners can present a *new Referendum* to the citizens of the City of Greenville with the language from Act 70 2003 specifically presenting the question about the Sunday sale of beer and wine for off-premises consumption.” Id. (emphasis added). In line with this interpretation, it is our opinion that the City of Clemson would have to hold a new referendum to address the specific question of beer and wine with the specific language stated in Section 61-6-2010(C)(1)(b). Because a referendum for the purpose of on-premises liquor sales were held less than forty-eight months prior, and a referendum for that purpose would be presented again, it is also our opinion the forty-eight month waiting requirement is applicable.

Finally we address your questions concerning S.C. Code Ann. § 61-6-2010(C)(4) (2009) which permits the governing body of a county or municipality to call a referendum as provided in Section 61-6-2010(C)(1)(a)-(c) by ordinance, rather than by means of a petition as set forth in Section 61-6-2010(C)(1). Again, Subsection (C)(4) reads as follows:

[i]n addition to the petition method of calling the referendum provided for in item (1) of this subsection, a county or municipal governing body by ordinance may also call the referendum. Upon receipt of a copy of the ordinance filed with the county or municipal election commission at least sixty days before the date of the next general election, the commission shall conduct the referendum in the manner provided in this section at that general election. The provisions of this item are in addition to the authority of a municipal governing body to call for a referendum under the circumstances enumerated in subsection (D).

Construing this provision with the statutory scheme as a whole, there is no indication that the Legislature did not intend for the forty-eight month waiting requirement to apply to referendums called by ordinance of the county or municipal governing body. In fact, within the same statute, under Section 61-6-2010(D)(3), the Legislature specifically acknowledged an instance where it did not intend for the forty-eight month provision to apply. Specifically, S.C. Code Ann. § 61-6-2010(D)(3) (2009), concerning additional instances where a municipal governing body may order a referendum regarding the possession, sale, and consumption of alcoholic liquors by the drink,¹ expressly states “Subsection (C)(2) does not apply to this referendum.” As similar language expressly indicating that the forty-eight month provision would not apply to a referendum called by ordinance by a county or municipal governing body, it is our opinion that a court would find the forty-eight month waiting requirement applies to referenda conducted pursuant to Section 61-6-2010(C)(1)(a)-(c) regardless of whether the referendum was called by way of petition or ordinance.

Conclusion

Based upon the legislative history of S.C. Code Ann. § 61-6-2010 (2009 & Supp. 2015) and § 61-4-510 (2009 & Supp. 2015) and the rules of statutory construction as specified above, it is our opinion that a court would find the City of Clemson would have to hold a new referendum asking the question contained in S.C. Code Ann. § 61-6-2010(C)(1)(b) in order to present the question of whether the City can permit the Sunday sales of beer and wine for off-premises consumption to its voters. In addition, we believe the City of Clemson must wait the forty-eight month waiting period as required by Section 61-6-2010(C)(2) prior to holding a referendum on the question contained in Section 61-6-2010(C)(1)(b).

We have reached this conclusion by looking to the plain language of S.C. Code Ann. § 61-6-2010(C)(1)(c), specifying that a referendum on the question of whether special permits can be issued for the sale of beer and wine for off-premises consumption alone only applies “in case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993.” Thus, counties and municipalities holding a referendum pursuant to Section 61-6-2010(C)(1)(c) would already be authorized to issue special permits for the sale of on-premises consumption of liquor as of June 21, 1993. You have provided that the City of

¹ S.C. Code Ann. § 61-6-2010(D)(3) (2009) includes the following additional circumstances when a municipal governing body may order a referendum: “(a) parts of the municipality are located in more than one county; (b) as a result of a favorable vote in a county referendum held pursuant to this section, permits may be issued in only the parts of the municipality located in that county; and (c) the proposed referendum would authorize issuance of permits in the remaining parts of the municipality.”

Clemson held a favorable referendum in November of 2014 relating to the on-premises consumption of liquor by the drink. Thus, we presume it was not authorized to issue special permits for the same purpose as of June 21, 1993.

The remaining referendum question applicable to the City of Clemson for it to present the question of whether special permits can be issued for the Sunday sale of beer and wine for off-premises consumption to the voters is the question contained in Section 61-6-2010(C)(1)(b):

‘Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments authorized to be licensed for consumption-on-premises sales and to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?’

S.C. Code Ann. § 61-6-2010(C)(1)(b) (2009) (emphasis added). Thus, because we believe it is necessary for the question of on-premises liquor by the drink to be presented again with the question of the sale of beer and wine for off-premises consumption, it is our opinion that the forty-eight month waiting requirement specified in Section 61-6-2010(C)(2) must be applied.

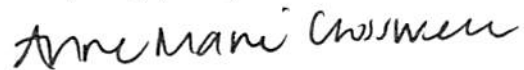
As we do not believe the current law provides a way for a referendum solely on the question of whether special permits for the Sunday sale of beer and wine for off-premises consumption to be presented in situations like that of the City of Clemson, perhaps seeking legislative amendment of the clause “in case of a county or municipality where temporary permits are authorized to be issued pursuant to this section as of June 21, 1993” currently contained in Section 61-6-2010(C)(1)(c) would be the most expeditious means for the City of Clemson to hold a second referendum solely on the issue of whether it can permit the Sunday sale of beer and wine for off-premises consumption.

Finally, in regards to your second question of whether the forty-eight month waiting requirement would apply to Section 61-6-2010(C)(4) (2009), permitting a governing body of a county or municipality to call a referendum on the questions provided in Section 61-6-2010(C)(1)(a)-(c) by ordinance rather than by means of a petition, it is our opinion that a court would find that it does. Reading the statute as a whole, the legislature has provided no indication that it did not intend for such requirement to apply to a referendum called by means of ordinance. Alternatively, it did expressly exclude the forty-eight month waiting requirement in instances when a municipal governing body calls a referendum pursuant to Section 61-6-2010(D)(3). We believe this comparison clearly indicates that it was the Legislature’s intent the forty-eight month waiting requirement would apply to referenda called pursuant to Section 61-6-2010(C)(4).

The South Carolina Department of Revenue is responsible for issuing special permits and regulation of Title 61. As such, we have been in contact with the Department of Revenue’s Office of General Counsel for Litigation concerning this matter, and it has indicated its concurrence with the conclusions expressed above.

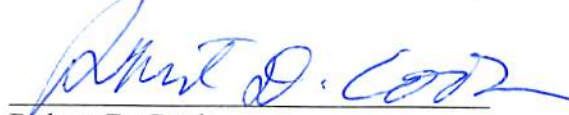
Mary C. McCormac, Esquire
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Very truly yours,



Anne Marie Crosswell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General