

1979 WL 43482 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 24, 1979

\*1 Honorable Arnold S. Goodstein  
Senate Office No. 1  
The State House  
Columbia, South Carolina

Dear Senator Goodstein:

In a letter to this office you referred the question put to you by a constituent concerning whether or not a federal court can pursuant to the federal bankruptcy laws order a store to be opened on Sundays in this State in violation of the 'blue laws'. Specifically you referenced the Order of U.S. District Court Bankruptcy Judge John L. Glagay of the Southern District of New York pertaining to the J. M. Fields, Inc. store in Charleston. In response to your letter, I sent for and have received in the last several days a copy of such Order. By paragraph 9 of the April 11, 1979 Order of Judge Glagay it is ordered that:

'In conducting the liquidation sales described in the Agreement, the Agent shall not be required to comply with the provisions of any state law or local statute or ordinance of any jurisdiction in which the Fields stores are located.'

Apparently such paragraph served as the basis for the opening of the Charleston stores on several past Sundays. However, you indicated to me by telephone that you were informed that the liquidation sales have been completed and therefore the stores are no longer open on Sundays.

As to your question concerning the authority of a federal bankruptcy judge to issue such an order directing non-compliance with this State's 'blue laws', it is generally held that:

'(U)nder Article 1, Section 8, of the Constitution of the United States, the United States has exclusive jurisdiction in bankruptcy matters, and the Bankruptcy Act supersedes principles of general jurisprudence in conflict therewith, including the general law governing creditors' rights and is paramount and exclusive in its operations where it applies. So, it is paramount or superior to any state statute, and suspends, transcends, overrides, or supersedes state laws which are inconsistent, or which interfere, or are in conflict, therewith, but only to the extent of the conflict. State laws not in conflict with the federal Bankruptcy Act are not suspended thereby, . . .'. (Emphasis added.) 8 C. J. S. Bankruptcy, Section 10, pp. 622-623.

Furthermore, the United States Supreme Court has established a two-prong analysis for determining whether a state statute is in conflict with a federal statute. [Perez v. Campbell](#), 402 U.S. 637, 91 S.Ct. 1704, 29 L.Ed.2d 233 (1971). First, the purposes of the state and federal statutes must be examined; then they must be compared to determine if in purpose or effect the state statute 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' [Id.](#) at 242 quoting [Hines v. Davidowitz](#), 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581, 587 (1941).

With reference to the above, it would appear that possibly the federal judge in his Order directing noncompliance with 'any state law' in conducting the liquidation sales acted improperly inasmuch as it could be argued that this State's 'blue laws' are not inconsistent with the federal Bankruptcy Act. However, this is a matter that should more properly be determined by a decision of a court in light of the circumstances of an individual case.

\*2 If there are any further questions, do not hesitate to contact me.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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