

1978 WL 34743 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 6, 1978

*1 Mr. Nicholas P. Sipe
Hearing Officer
South Carolina Alcoholic Beverage Control Commission
1205 Pendleton Street
Columbia, South Carolina

Dear Mr. Sipe:

You have asked whether a lease arrangement in which the landlord receives, as rent, a percentage of the gross sales of his tenant's business in effect makes the landlord a business partner of the tenant. The opinion of this office is that it does not.

[Section 33-41-220 of the 1976 Code](#) provides as follows:

(4) The receipt by a person of a share of the profits of a business is prima facie evidence that he is a partner in the business, but no such inference shall be drawn if such profits were received in payment . . .

(b) as wages of an employee or rent to a landlord, (emphasis added).

The foregoing section of the South Carolina Uniform Partnership Act is in accord with decisions of the South Carolina Supreme Court. For example, in [American Type Founders Co. v. The Greenwood Printing Co.](#), 88 S.C. 308, 70 S.E. 803 (1911), the court stated:

The mere fact that one agrees to receive compensation for labor, or for rent or hire of property, to be measured by the net profits of the business in which labor or property is to be employed, where the contract does not contemplate the exercise by the party of control in the conduct of business, or interest in the profits as a joint owner thereof, is not conclusive proof of a partnership. [Id.](#), 88 S.C. at 309.

It is therefore the opinion of this office that a lease arrangement in which the landlord receives, as rent, a percentage of the gross sales of his tenant's business does not in and of itself make the landlord a partner of the tenant.

Very truly yours,

L. Kennedy Boggs
Staff Attorney

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