

1978 WL 35303 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 4, 1978

**\*1 Re: Information Requests Concerning Beer and Wine, and Alcoholic Beverages**

John W. Fields, Esquire  
P.O. Box 1287  
Seneca, South Carolina 29678

Dear Mr. Fields:

In your letter dated September 12, 1978, you inquired of this office the following:

1. Can a City Ordinance restrict the time for the sale of beer and wine to 11 or 12 P.M. as opposed to the 2 A.M. time that is normally set by the ABC Commission?

It is generally said that municipalities have the authority to regulate and restrict the sale of beer and wine within their city limits as the particular circumstances warrant. See, § 5-7-30, Code of Laws for South Carolina 1976 as amended; City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E. 2d 242; Arnold v. City of Spartanburg, 201 S.C. 523, 23 S.E. 2d 735. However, it is axiomatic that any ordinance promulgated for that purpose cannot conflict with state law. Particular concern in this matter is § 61-9-90 of the South Carolina Code. This section authorizes the sale of beer and wine in mini-bottle establishments which are also licensed to sell beer and wine during those hours which mini-bottles are lawfully sold. With the exception of such dual license holders, it appears that reasonable restrictions on the hours beer and wine may be sold within the city limits may be prescribed by city ordinances if the circumstances warrant it.

2. Can the city regulate the hours of operation of a business which permits on-premise consumption in a manner different from that of an off-premise establishment?

Since there exists different enforcement problems regarding on-premise beer and wine consumption as contrasted with off-premise beer and wine sales, it would appear reasonable to impose different restrictions unique to each.

3. Can a City Ordinance restrict the hours of sale by premises licensed to sell mini-bottles?

Section 61-5-20 of the South Carolina Code specifically prescribes lawful hours of operation of mini-bottle establishments. These hours cannot be altered by conflicting local ordinances. See, Lomax v. City of Greenville, 225 S.C. 289, 82 S.E. 2d 191; City of Charleston v. Jenkins, supra. In addition, it has long been the opinion of this office that municipalities may not legislate in the area of alcoholic beverages in that this area has been preempted by the State of South Carolina. ART. VIII-A, Constitution of South Carolina, 1895 as amended.

If this office can be of further assistance, please feel free to call on us.

I remain,  
Very truly yours,

Edwin E. Evans  
Assistant Attorney General

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