

1974 S.C. Op. Atty. Gen. 100 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3736, 1974 WL 21254

Office of the Attorney General

State of South Carolina

Opinion No. 3736

March 19, 1974

***1 Prohibition against the sale of alcoholic liquors on election days as provided in Section 4–102 does not apply to the sale of minibottles in business establishments.**

Member

House of Representatives

Section 4–102, South Carolina Code of Laws (1962) provides as follows:

It shall be unlawful to sell any alcoholic liquors on Sunday, on election days, or during periods proclaimed by the Governor in the interest of law and order or public morals and decorum. Full authority to proclaim such periods is hereby conferred upon the Governor in addition to all other powers in him now reposed.

This provision when enacted in its present form was designated Section 14(g) of the Alcoholic Beverage Control Act of 1945, Act No. 211, XLIV Stat. at Large 337.

In the general election of 1972, the qualified electors of the State of South Carolina approved a constitutional amendment authorizing the sale and consumption of alcoholic liquors in containers of less than one half pint capacity. This constitutional amendment was ratified on March 28, 1973 (Act No. 122, Acts of 1973).

Upon ratification, the implementing legislation, Act No. 1063, Acts of 1972, went into effect. In its codified form, it provides, *inter alia*, as follows:

Notwithstanding any other provision of law.... Except on Sunday, it shall be lawful to sell and consume alcoholic liquors and beverages sold in sealed containers of two ounces or less in any business establishment between the hours of ten o'clock in the morning and two o'clock the following morning.... Section 4–29(4), South Carolina Code of Laws (1962), as amended. (Emphasis added.)

The 1972 act is a self-contained treatment of the subject matter of the sale of alcoholic liquors in “minibottles.” In the range of its provisions, it is far less comprehensive but yet more particular than the Alcoholic Beverage Control Act of 1945. Its enforcement procedures are separate from those established in the 1945 Act and the subject matter is considerably more limited. Further, it is apparent from the language of the minibottle legislation that the General Assembly did not intend it to fall within the purview of any other act of the General Assembly. This fact is attested to in the first six words of the statute: “Notwithstanding any other provision of law....” If the Legislature had intended that the “minibottle law” should be governed by the 1945 Act, the above quoted language would be of no effect.

The South Carolina Supreme Court considered a similar situation in the case of [Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 \(1970\)](#). In that case the Court was considering a conflict between the provisions of the 1945 Act and other provisions of the then existing “brownbagging law.” In reaching its conclusion, the Court applied the terms of the “brownbagging law” which were clear and unambiguous even though this modified the 1945 provisions.

Based on the specific wording of Section 4-29 and given the decision of the South Carolina Supreme Court in an analogous situation, it is the opinion of this office that Section 4-102's prohibition against the sale of alcoholic liquors on election days does not apply to the sale of minibottles in business establishments. A more thorough discussion of the issues involved herein is contained in a memorandum prepared by this office which will be available to you upon request.

*2 We specifically express no opinion as to how this affects the powers of the Governor with regard to declaring states of emergency. Likewise, we do not intend that this opinion be construed to except the sale of any alcoholic beverages on election days from the prohibitions of Section 23-658 against sales, etc., within one mile of any voting precinct.

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