

1974 WL 27700 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 5, 1974

***1 Re: Easley City Ordinances Regulating the sale and Consumption of Beer and Fine.**

Honorable Charles E. Eilenburg, Jr.
Mayor
Easley, South Carolina

Dear Mayor Eilenburg.

You have asked this office to advise you with regard to the validity of several sections of the Easley City Code which regulate the sale of beer and wine. It is significant that the relevant provisions pertain exclusively to beer and wine—beverages declared by statute to be ‘nonalcoholic and nonintoxicating because the state has not expressly occupied the field with regard to these beverages as it has with alcoholic liquors. Opinion No. 2282, OP. TTY.GEN. 95 (1967). Consequently, municipalities may regulate the sale and consumption of beer and wine pursuant to the police powers conferred upon them by section 47-61, South Carolina Code of Laws (1962).

Sections 4-3 and 4-4 of the Easley City Code generally prohibit the public display and consumption of beer and wine. As written, both sections appear to be valid and enforceable. Indeed, in Opinion No. 2282, this office suggested that a similar ordinance be replaced to replace one found therein to be invalid on other grounds. (A copy of this opinion is enclosed for your consideration.)

With regard to Sunday sales, as the annotations in the City Code indicate, Section 4-2 is almost identical to Section 4-204, South Carolina Code of Laws (1962). Inasmuch as these provisions are not inconsistent and irreconcilable with each other, the ordinance is a valid exercise of the city's police power. *?? v. Southern b. Co.*, 166 S.C. 166, 67 W. E. 444 (19??).

Section 4-1 is intended to legislate the sale of beer and wine on weekdays. The South Carolina Supreme Court has conclusively determined that a municipal ordinance which regulates the sale and consumption of beer and wine on weekday evenings is ‘a reasonable, proper and valid exercise of the police power granted to such municipality by Section 47-61 of the Code.’ *City of Charleston v. Jenkins*, 245 S.C. 205, 193 S.E.2d 242 (1965). The City of Charleston ordinance at issue in that case only prohibited sales and consumption during certain hours whereas section 4-1 of the Easley City Code requires the physical closing of all establishments holding State beer and wine permits without regard to the nature of the business. Although other provisions in this section give the impression that it is intended to police ‘beer joints, saloons and taverns,’ it nevertheless applies, without limitation, to all licensees, which presumably includes restaurants, convenience stores, etc. Because Section 4-1 actually regulates the time during which a business may be conducted rather than merely restricting the hours for sale of certain beverages, no statement can safely be made as to its validity. As a general proposition, regulations fixing a closing hour for business depends on their validity upon the nature of the business sought to be regulated. 16 M.JUR.2d Constitutional Law § 325.

***2** Regulations by municipalities of the hours during which specified businesses may be conducted have been declared reasonable and constitutional where there is a patent relationship between the regulations and the protection of the public health, safety, morals or general welfare, such as where the business is of such a character that the public health or morals are likely to be endangered if it is carried on during the late hours of the night. 56 M.JUR.2d Municipal Corporations § 474.

Therefore, the validity of Section 4-1 depends upon the type of business regulated and whether or not the circumstances are such in your community that a regulation of this nature is necessary to promote and protect the public's health, safety, morals or general welfare. This, of course, is essentially a factual determination.

If we can be of further assistance to you in this matter, please feel free to call upon us.

Sincerely,

Dudley Saleeby, Jr.
Assistant Attorney General

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