1973 WL 27763 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 19, 1973

Re: Possession and consumption of alcoholic beverages on the premises of establishments holding a Beer and Wine Permit.

***1** Honorable S. J. Pratt
Chairman
Alcoholic Beverage Control Commission
P. O. Box 1445
Columbis, South Carolina 29202

Dear Mr. Pratt:
With regard to the places where an individual may possess and consume alcoholic liquors in quantities other than sealed two ounce containers, Section 10, Act No. 1063, Acts of 1972, provides as follows:
(2) Any person may possess or consume alcoholic liquors:
. . ..

(c) In separate and private areas of an establishment whether or not such establishment includes premises which are licensed pursuant to sub-sections (3) and (4) of this section where specific individuals have leased such areas for a function not open to the general public.

Subsection (3) authorizes the issuance of Sale and Consumption licenses (hereinafter designated SC Licenses) to nonprofit organizations; subsection (4) does the same for business establishments. Therefore, although the respective language of Sections 10(2)(b) and 10(2)(c) makes it appear that (b) was intended to govern private property while (c) controlled businesses, the provision in (c) for establishments including premises licensed to nonprofit organizations clearly indicates that Section (c) establishments include both private property and public facilities.

In allowing possession and consumption in business establishments, Act 1063 exceeds the scope of the previous 'brown-bagging' law for such conduct was therein limited to:
[A]ny other private property not primarily engaged at that time in commercial entertainment and not open to the general public at the time when such person has obtained the express permission of the owner or person lawfully in possession of the property. . . . Section 4-29(2)(b), South Carolina Code of Laws (1962), as amended. (Emphasis added.)

The 'brown-bagging' law made it a violation to possess or consume in a business establishment not holding a PC license; however, the 'mini-bottle' act specifically sanctions these activities in such businesses subject to the restrictions of a (1) leasehold arrangement, (2) of a separate and private area, (3) for a function not open to the general public. Nothing in Section 10(2)(c), in particular, nor in any other part of Act No. 1063, supports the argument that the 'establishments' in Section 10(2)(c) do not include businesses holding beer and wine permits. To the contrary, that section allows possession and consumption in separate and private parts of premises holding SC licenses and, as a matter of business practice, establishments with SC licenses also hold beer and wine permits. Therefore, it would be illogical to contend that possession and consumption is authorized in view of a businees' SC license but prohibited by its beer and wine permit.

There being no prohibition in the 'mini-bottle' law against the possession and consumption of alcoholic beverages on the premises of a beer and wine permittee, it becomes necessary to see whether or not such conduct is proscribed by other alcoholic beveragescontrol legislation. With regard to beer and wine permits, Section 4-215(6), South Carolina Code of Laws, 1962, makes it a violation for a permittee or his servants, agents, or employees to:

***2** Sell, offer for sale or possess any beverage or alcoholic liquor the sale or possession of which is prohibited on the licensed premises under the law of this State.

The essence of the issue at hand is not sale or offer to sell by the permittee, but possession by his customers. As to beverages which are 'prohibited on the licensed premises,' these are not defined in Section 4-215 and, absent prohibitions in another section, this language does nothing to limit the scope of Section 10(2)(c).

The section most frequently cited in support of enforcement efforts in the past has been Section 4-95, South Carolina Code of Laws (1962). It provides, in part, as follows:

It shall be unlawful for any person to store or have in possession any alcoholic liquors in his place of business other than a licensed liquor store. A place of business shall include:

(1) Any place where goods, wares or merchandise are sold, offeredfor sale or distributed, and also places of amusement.

The limited utility of this provision in the era of the 'mini-bottle' is readily apparent in view of the fact that Act No. 1063 specifically authorizes the storage, sale, and consumption of alcoholic beverages in licensed establishments. Even if one submits that the inconsistency is limited to the service of liquor in sealed containers of two ounces or less, the applicability of Section 4-95 is very much in doubt in the face of Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). [For an analysis of the decision, see 23 S.C.L.R. 140 (1970).] In Lewis, the Commission allowed the owner of Caddy's Owl Club in Myrtle Beach to pay a fine in lieu of suspension when her husband (who was also an employee) was found to have legal alcoholic liquors stored in his car parked on an adjacent parking lot. The owner appealed to the Court of Common Pleas for Horry County who reversed the findings of the Commission. The Commission in turn appealed to the Supreme Court. The issue presented was whether or not that part of the 'brown-bagging' law which permitted 'any person to possess or consume alcoholic liquors on the premises' of licensed establishments [Section 4-29(4)] impliedly repealed the proscription of Section 4-95 against one possessing 'alcoholic liquors in his place of business other than a licensed liquor store.' In affirming the lower Court and holding against the Commission, the Supreme Court ruled that Section 4-29 modified Section 4-95 'so as to remove and exempt from the application of Section 4-95 the place of business' involved. Section 4-95 remained in effect only as to places of business not within the purview of Section 4-29.

Applying the rationale of the Court in Lewis to the 'mini-bottle' legislation, it becomes evident that Section 10(2)(c) has removed and exempted possession and consumption in separate and private areas of an establishment from the application of Section 4-95. This exemption is in addition to that necessitated in favor of businesses by the allowances for sale, stogage and on-premises consumption of the 'mini-bottle.'

***3** Whereas the practical effect of Lewis v. Gaddy was to allow PC licensees to possess and consume alcoholic liquors on their own premises, Act No. 1063 contains safeguards against such practices. Section 10.10 makes it a violation for a SC licensee to have 'in his possession on his licensed premises any alcoholic beverages in excess of 50 proof in containers other than sealed containers of two ounces or less.' As to these establishments which do not have SC licenses, there is a requirement that a specific individual lease a separate and private area for possession and consumption purposes. This arrangement would seemingly prevent an owner or operator from stocking his establishment with his own alcoholic liquors, barring the obvious subterfuge of leasing it to himself or his employees.

In view of the specificity of the language in Act No. 1063, Acts of 1972, and the holding of the Supreme Court in Lewis v. Gaddy, it must be concluded that neither Section 4-95 nor any other existing statute affects a limitation on the applicability of Section 10(2)(c) to beer and wine permittees.

Sincerely,

Dudley Saleeby, Jr.
Assistant Attorney General

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