

1973 S.C. Op. Atty. Gen. 155 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3531, 1973 WL 20991

Office of the Attorney General

State of South Carolina

Opinion No. 3531

May 24, 1973

**\*1 The leasing of a publicly owned auditorium, coliseum or armory for the holding of a function open to the general public at which each person is allowed to possess and consume alcoholic beverages would not be a lawful use of these premises.**

Director  
South Carolina Alcoholic  
Beverage Control Commission

You have asked this office to advise the Alcoholic Beverage Control Commission with respect to the legality of a practice now being engaged in by some local officials in charge of administering certain types of publicly owned facilities located in their respective communities. The problem posed arises when these local public authorities obtain a temporary permit from the Commission authorizing the possession and consumption of alcoholic beverages within the subject premises for the benefit of a lessee who then promotes and charges admission to a function open to the general public at which each person admitted is free to bring his own alcoholic beverages and consume them on the premises.

Authority for the issuance of temporary possession and consumption permits in certain publicly owned buildings is found in Section 4–48, South Carolina Code of Laws (1962), as amended, which provides:

Notwithstanding any other provision of law a permit not to exceed seventy-two hours to allow the possession of alcoholic beverages shall be issued upon request, from time to time, to the public authorities in charge of a publicly owned auditorium, coliseum or armory. Such permit shall be for the benefit of any person *leasing or otherwise lawfully using* the subject premises. (Emphasis added.)

Inasmuch as Act No. 1063, Acts of 1972, (which provided for the sale and consumption of alcoholic beverages in sealed containers of two ounces or less) did not expressly repeal Section 4–48, the Commission has continued to issue temporary permits.

Particular emphasis must be placed upon the statutory requirement that the lease or other use must be a ‘lawful’ use of the premises. (It could not be gainsaid to the contrary that only other uses need be lawful and that lessees could operate free of the requirements of the law.) Section 4–48 does not indicate the circumstances under which the possession and consumption of alcoholic beverages by individuals within these types of buildings is either lawful or unlawful. Therefore, it is necessary to consider the statutory requirements of Section 10(2), Act No. 1063, Acts of 1972, which specifies where and under what conditions individuals may possess and consume alcoholic liquors:

1. Section 10(2)(a) permits possession and consumption in private residences, hotel rooms, and motel rooms. Thus, it has no bearing on this inquiry.

2. Section 10(2)(b) pertains to:

[O]ther property not engaged in any business or commercial activity, *at private gatherings*, receptions, or occasions of a single and isolated nature . . . and to which *the general public is not invited*. . . . (Emphasis added.)

\*2 Obviously, functions open to the general public could not claim the benefit of this provision.

3. Section 10(2)(c) covers:

[S]eparate and *private* areas of an establishment . . . where specific individuals have leased such areas for a function *not open to the general public*. (Emphasis added.)

This section, although it is addressed to lease agreements, does not permit the possession and consumption of alcoholic beverages at functions open to the general public.

Inasmuch as the three sections cited above are controlling in the area of individual usage, it is the opinion of this office that the leasing of one of the three types of public buildings specified by the statute for the holding of a function open to the general public at which each person is allowed to possess and consume alcoholic beverages would not be a lawful use of those premises. On this basis the Commission would be justified in refusing to issue the temporary permit unless and until it is satisfied that the intended use of the building is a proper one under the law. Accordingly, conduct of the type described above would constitute a violation of the provisions of the temporary permit.

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