

1973 S.C. Op. Atty. Gen. 163 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3535, 1973 WL 20995

Office of the Attorney General

State of South Carolina

Opinion No. 3535

June 5, 1973

***1 Re: Validity of City Ordinance Regulating the Hours for the Sale and Consumption of Beer**

Mr. Robert O. Conoley
City Attorney
18 Beattie Place
Greenville, South Carolina 29601

Dear Mr. Conoley:

You have asked this office to advise you as to the enforceability of City of Greenville Ordinance Section 4-17 which provides as follows:

It shall be unlawful for any person in charge of any store, beer parlor or other place of business or commercial establishment to sell, give away or in any way to dispense or permit the consumption of any wines or malt liquors, in such store, beer parlor or other place of business or commercial establishments between the hours of 1:30 A. M. and 7:00 A. M.

An ordinance of almost identical wording was attacked on several grounds, including alleged conflict with State beer and wine laws, in City of Charleston v. Jenkins, 243 S.C. 205, 133 S.E.2d 242 (1963). In upholding the ordinance as a proper exercise of the police power of the municipality, the South Carolina Supreme Court ruled:

We think that Section 3-11 of the Code of the City of Charleston is a reasonable, proper and valid exercise of the police power granted to such municipality by Section 47-61 of the Code. The provision of such ordinance is not inconsistent with or in conflict with Section 4-204 of the Code. Id. at 212, 133 S.E.2d at 247.

A copy of the Jenkins decision is enclosed for your consideration. It is the opinion of this office that the Court's reasoning therein is equally applicable to the Greenville ordinance. Accordingly, the City of Greenville could validly enforce Ordinance Section 4-17.

By way of information, I am also enclosing a copy of Opinion No. 2282, OP. ATTY. GEN. 95 (1917). It contrasts the State's express occupation of the field of alcoholic liquors with the reservation of some powers to municipalities to regulate the sale and consumption of beer and wine. Your particular attention is directed to the proposed ordinance located at page 97 of the Opinion. By defining beer and wine as the General Assembly has in Section 4-201, South Carolina Code of Laws (1962), the City of Greenville could avoid possible confusion in the interpretation of the term 'malt liquor.'

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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