

1973 WL 26798 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 2, 1973

***1 In Re: Sunday, Coin-Operated Machines, Operation on**

Honorable M. L. Brown, Jr.
Sheriff
Horry County
Conway, South Carolina 29526

Dear Sheriff Brown:

You have inquired whether or not the operation of piccoios on Sunday is violative of State law. I shall assume that you have in mind coin-operated machines.

Section 64-2, 1962 Code of Laws of South Carolina, as amended, reads in part:

‘—it shall be unlawful for any person to engage in—labor, [or] business of his ordinary calling [on Sunday].’

The question devolves into whether or not the making of coin-operated music machines available for operation and the providing of a place for such operation on Sunday constitutes ‘engaging in business’ within the meaning of the cited statute. This letter does not have to do with the question of servicing such machines on Sunday, which would appear clearly to come with the proscription of 64-2.

In arriving at a substantive opinion on the applicability of any criminal statute, the opinions of the South Carolina Supreme Court are of first importance, particularly when, as is the case herein, there is no United States Constitutional problem involved. There is no decision in point from our State Supreme Court. Next, when the statute itself is not clear, since there is involved a statutory rather than a common law crime, resort must be taken to the decisions of the highest courts from other states with similar statutes. There have been remarkably few such decisions in the other states.

New York has held that operation of an unattended, self-service laundromat does not constitute ‘business’ or ‘labor’ within the meaning of so called Sunday blue laws, [People v. Welt](#), 178 N.Y.S.2d 313 [People v. Gwyer](#), 179 N.Y.S.2d 987, but that a person in attendance to open up such a business establishment and attend to the needs of customers who came in to operate the machines is in violation of those laws. [People v. Rubenstein](#), 182 N.Y.S.2d 548.

New Jersey, on the other hand, holds that operation of an unattended, coin-operated, self-service laundromat is violative of its similar law because the owner making the service available for use on Sunday places him constructively ‘in the market place’, thus constituting the prohibited engaging in business on Sunday.

While not directly in point, decisions on whether or not the operation of car washes on Sunday, is lawful as a work of necessity illustrates the division of authoritative opinion in this general area. Ohio holds that such activity is a work of necessity, and, therefore, is lawful, [Ohio v. Applebaum](#), 187 N.E.2d 526; whereas, New York holds the same activity on Sunday unlawful because it is not a work of necessity. [People v. Gill](#), 134 N.Y.S.2d 622.

With the obvious lack of clarity on the question, contained in the language of 64-2, and the dearth of substantive decisions available for guidance, plus the fact that there is almost an even split of authority in the few decisions that are available, the

narrow question you present is not at this time one that can be answered with confidence by anyone except the State Supreme Court.

*2 We are here concerned with a criminal statute, of course, and, the general rule to be applied is that such a statute, when sufficient ambiguity exists, should be construed strictly against the State. It is possible, however, that judicial determination of the highest level in the State, when and if it comes, will be that there is no such ambiguity.

If the problem you face is one that requires some action on your part at this time, it is suggested that the most feasible way to seek a solution might be to utilize the procedures provided by Section 64-2.4, i.e. make application in a suitable case to the circuit court or county court for an injunction against the subject activity. In this way, the abrasiveness of a criminal charge, possibly involving an arrest, might be avoided.

Very truly yours,

Joseph C. Coleman
Deputy Attorney General

1973 WL 26798 (S.C.A.G.)

End of Document

© 2020 Thomson Reuters. No claim to original U.S. Government Works.