

1973 S.C. Op. Atty. Gen. 262 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3596, 1973 WL 21051

Office of the Attorney General

State of South Carolina

Opinion No. 3596

August 9, 1973

***1 Tax Commission agents have authority to investigate and search for untaxed alcoholic liquors at all places where there is reasonable cause to suspect that the same are being kept in violation of South Carolina law.**

Chairman

South Carolina Tax Commission

This letter is written responding to yours of July 18, 1973, in which the opinion of this office is requested upon the following question:

‘Does [Section 1A of Act No. 432, 1973 Acts] give the Tax Commission agents authority to inspect places not holding a license to sell alcoholic beverages in sealed containers of two ounces or less and write violations, seize the alcoholic beverage, levy a penalty when such operation is found selling liquor by the drink?’

Section 1A states:

‘Any person, corporation or organization who has in their possession, custody, or within their control alcoholic liquors which are handled, stored, kept possessed, transported, used or distributed in violation of any of the provisions of Chapter 1, Title 4 of the 1962 Code, or in violation of the provisions of this act or with the design of avoiding payment of any license taxes provided in Chapter 16 of Title 65 of the 1962 Code, or any other taxes shall be required to pay a penalty of twenty dollars per container to be assessed by the Tax Commission as other taxes are collected.’

The Alcoholic Beverage Control Commission is charged to enforce the laws relating to the regulation of alcoholic beverages (Section 4–27.3, Code of Laws, 1962) and the Tax Commission is charged to administer and collect taxes imposed upon alcoholic beverages (Section 4.5). Section 4.22 of the Code authorizes the employment of inspectors to administer and enforce the taxing statutes.

‘The Commission may employ such inspectors as may be necessary for the proper administration and enforcement of the provisions of this chapter and chapter 16 of Title 65. * * *. The Governor shall commission as State constables such inspectors or agents as are certified to him by the Commission in order that they shall have adequate authority as peace officers to enforce the provisions of this chapter and chapter 16 of Title 65. * * *.’

To further assist in the enforcement of the taxing statutes, Section 4–23 authorizes the employment of other personnel as shall be deemed necessary to enforce the taxing statutes.

The inspectors or agents, as they shall hereafter be called, have authority and are charged by law to make inspections and searches of premises upon which there is reason to suspect that untaxed liquors may be kept or stored. This permits agents to make inspections of premises having licenses to sell alcoholic beverages and permits searches of unlicensed premises. Violations and penalties must be made in accordance with the applicable statutes, including the penalty statute above quoted.

This office must point out, however, that in making an inspection or search an agent must be careful to avoid violating the rights of a person guaranteed by the United States Constitution and State Constitution to be secure against unreasonable searches and seizures. To avoid such violations it is necessary that an agent, where alcoholic beverages are not in plain view, whether on

licensed or unlicensed premises, obtain the consent of the owner or the custodian of the premises to search the premises and such consent must be obtained prior to making his inspection or search. If consent for the search is not granted by such persons, then the agent is required to obtain a search warrant prior to the inspection or search.

*2 This office emphasizes the necessity of following acceptable search procedures because any alcoholic beverages which are discovered through an illegal search may not be used as evidence to prove or establish a violation of law and alcoholic beverages seized as a result of such a search would be required to be returned to the owner.

In conclusion, this office restates its opinion that the agents of the Tax Commission are charged with the duty and responsibility of investigating and searching for untaxed alcoholic beverages where there is reasonable cause to suspect that the same are being kept or stored on unlicensed premises in violation of South Carolina law.

G. Lewis Argoe, Jr.
Assistant Attorney General
South Carolina Tax Commission

1973 S.C. Op. Atty. Gen. 262 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3596, 1973 WL 21051

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.