

1973 WL 26920 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 9, 1973

**\*1 re: Validity of City Ordinance Regulating the Public Consumption of Intoxicating Beverages.**

Captain R. N. Gotschall  
Lake City Police Department  
Lake City, South Carolina 29560

Dear Captain Gotschall:

You have asked this office to advise you as to the enforceability of that portion of the Lake City Municipal Ordinances which provides:

That it shall be unlawful for any person or persons to drink any kind of intoxicating, alcoholic or non-alcoholic beverages [as defined by Section 4-201, South Carolina Code of Laws (1962)] on the streets, alleyways, highways or other public places in the city.

Section 4-201 classifies as 'nonalcoholic and nonintoxicating' all beers and wines which do not contain in excess of certain established percentages of alcoholic content (5% alcohol by weight for beer and 21% alcohol by volume for wine).

It is clearly the intent of the Lake City Ordinance to prohibit the public consumption of both alcoholic liquors and the beers and wines deemed 'nonalcoholic and nonintoxicating' by Section 4-201. With respect to alcoholic liquors, the General Assembly has expressly occupied the field. Sections 4-121 and 4-122, South Carolina Code of Laws (1962).

Therefore, a municipality has no authority to enact ordinances which purport to control the possession and consumption of such beverages. 1967 OP.ATTY.GEN. No. 2282, P. 95. (A copy of this opinion is enclosed for your consideration.)

The State has not preempted the field of beer and wine regulation. Accordingly, the sale, consumption and display of these beverages may be controlled by a municipality as a valid exercise of its police power. In this case, the wording of the ordinance is such that it is difficult to distinguish between the 'intoxicating beverages' which could be either 'alcoholic or nonalcoholic.' Therefore, inasmuch as a portion of the ordinance is invalid, the ordinance, as a whole, becomes void and unenforceable.

The City of Lake City may enact another ordinance which would prohibit the public consumption of wine and beer. (An example can be found in the attached opinion.) Such a law would appear to be sufficient to enable your department to control the problem referred to in your letter. Persons observed possessing and or consuming alcoholic liquors in a public place would be subject to prosecution under the State 'mini-bottle law.' Act No. 1063, Acts of 1973. A copy of the pertinent sections is enclosed and you will note that Section 10(2) does not allow the use of alcoholic beverages in public areas in the manner you have described. (Section 10.10 is the penalty provision.)

A revised city ordinance governing beer and wine consumption applied in conjunction with Act No. 1063, Acts of 1973, would give your department the legal authority necessary to police the public possession and consumption of beer, wine and alcoholic liquors within the Lake City municipal limits.

If this office can be of further assistance to you with regard to this matter, please feel free to call upon us.

Sincerely,

**\*2** Dudley Saleeby, Jr.  
Assistant Attorney General

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