

1973 WL 27629 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 16, 1973

*1 Honorable Frank Powell
Sheriff of Richland County
1400 Huger Street
Columbia, South Carolina 29201

Dear Sheriff Powell:

You have requested an opinion from this office regarding the application of Section 64-2.1 of the Code of Laws of South Carolina to the operation of a delicatessen or restaurant under the same roof and management as a grocery store. Section 64-2.1 provides, in pertinent part, that the prohibitions of Section 64-2 against work on Sunday shall not apply to:

‘ . . . the operation of public lodging or eating places (including food caterers) nor to the sale of emergency food needs at open air markets and grocery stores which do not employ more than three persons including the owners or proprietors at any one time . . . ’

The grocery store in question employs only three (3) persons on Sundays to service ‘emergency food needs,’ but retains, additional personnel in the delicatessen or restaurant portion of the store.

Such an operation, in our opinion, is not legitimately included within the exception contained in Section 64-2.1.

A store whose function is primarily that of a grocery store to operate within its confines and under the same management a delicatessen or restaurant requiring personnel in excess of the three permitted is impermissible. Although there has been no judicial decision in this State addressed to the problem which you present, the Court of Appeals of Maryland was confronted in [Giant of Maryland, Inc. v. State's Attorney](#), 267 Md. 501, 298 A.2d 427 (1973) with a situation sufficiently similar to provide valuable insight into the situation in question. Giant stores included departments which would be individually exempt by Maryland statute—drugstores, delicatessens and bakeries and bake shops. The Court noted, however, that the store operated as an entity, and that its primary source of income was derived from the sale of general food products. For these reasons it was found that Giant was not encompassed within the blanket exception for drugstores, delicatessens, etc., but was subject to the limitation of ‘small businesses with not more than six persons on any one shift.’ It was considered meaningful in the [Giant](#) case that there was ‘no significant distinction within the corporate structure as to the exempted-type of business and the non-exempted.’ [Id.](#), 298 A.2d at 436. The fact that all employees were under one personnel system was an important element in the Court's determination.

We agree with the Maryland court that where various departments constitute a single total operation, and where the primary function of the enterprise does not exempt it from the application of the Sunday Blue Law, the limitation as to the number of employees in the store in light of its primary function is applicable. To determine otherwise would be inconsistent with what we conceive to be the intent of the legislature as manifested by Section 64-2.1.

Any other decision might also create interminable enforcement problems in view of the great amount of latitude for possible abuse. We, therefore, conclude that an operation such as the one which you have described does not by its nature fall within the statutory exception for public eating places; consequently, it is limited as a grocery store to employing no more than three persons on Sunday and may not operate lawfully on Sunday with more than that number.

Sincerely,

***2** C. Tolbert Goolsby, Jr.
Deputy Attorney General

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