

1972 S.C. Op. Atty. Gen. 79 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3277, 1972 WL 20421

Office of the Attorney General

State of South Carolina

Opinion No. 3277

March 9, 1972

***1 Re: No. 5, Alcoholic Liquors**

Mr. Joe G. Shinn
Director
South Carolina Alcoholic
Beverage Control Commission
Box 1445
Columbia, South Carolina 29202

Dear Mr. Shinn:

Your letter of February 29, 1972, requested that this Office provide you with an opinion as to certain matters presently before the Alcoholic Beverage Control Commission. Each of the questions presented is treated separately herein as follows:

1. In a distillery prohibited by the laws of this State from sponsoring a golf tournament in which valuable prizes would be awarded to the winners?

Such a form of advertising as is suggested here is not specifically prohibited by any statute of this State or any rule or regulation of the Alcoholic Beverage Control Commission. Moreover, it does not appear that the prizes that might be awarded to winners of the proposed golf match would come within the proscription of AL-Regulation No. 17, in that they would not be given by the sponsor to induce the recipient to purchase alcoholic liquors but to reward him for his accomplishment. This opinion, of course, is limited to the particular endeavor considered.

2. What are the minimum requirements necessary to satisfy the definition of a business 'bona fide engaged primarily and substantially in the preparation and serving of meals?' Section 4-29(B)(4)(a), CODE OF LAWS OF SOUTH CAROLINA (1962), as amended.

The purpose and intent of legislatures in limiting the public's access to alcoholic liquor to places where meals are served has been said to be 'to prevent the return of the public saloon and barroom.' Hammond v. McDonald, 49 Cal. App. 2d 671, 89 P. 2d 407, 411 (1939). If such access is limited to places where the 'principal business was the service of food,' any dispensing of liquor must be 'a mere adjunct or side line' and 'the dispensing of sandwiches, hard boiled eggs, etc.,' as was done by the old fashion saloon, would not qualify a business as being primarily engaged in the preparation and service of meals (e.g., a restaurant). See; Covert v. State Board of Equalization, 162 P. 2d 717 (1945).

Moreover, under the subject definition, it would not be enough that 'meals,' regardless of how substantial, are made available to customers on the premises. Courts have held that:

'Preparation and Service' necessarily requires an establishment where there are people who mix or otherwise prepare food or beverages and who serve it to customers in a form which is not customarily or easily carried away from the premises for later consumption. Moore v. Arthur Realty, Corp., 95 Aiz. 70, 336 P. 2d 795, 793 (1963).

Therefore, it is the opinion of this Office that for a business to satisfy the definition of Section 4–29(B)(4)(a), not only must it possess the food, material, personnel and facilities for providing meals, but the preparing and serving of meals, when and as ordered by customers, must be essentially its main purpose and business and the providing of accommodations for the possession and consumption of alcoholic liquors a secondary and incidental feature.

*2 3. What is meant by the term ‘bona fide check’ as found in Section 4–202.1, CODE OF LAWS OF SOUTH CAROLINA (1962)?

Section 10.3–104(2)(b) of the CODE provides that every check that is signed by the maker and contains a promise to pay a sum certain in money on demand and is made payable ‘to order or to bearer’ is a negotiable instrument. It is provided in Section 10.3–414(1) that every endorser of such an instrument agrees to pay the amount of the check, as of the time he endorses it, to the person who ultimately receives it or to any subsequent endorser, unless he specifies in his endorsement that he will not be liable for the check. Thus an unqualified endorser's liability under a check is the same as if he had written it himself.

Therefore, an unqualifiedly endorsed, or ‘third-party’, check would be a bona fide check, in that each endorser has ‘a fixed liability for the consideration.’ Bluck's Law Dictionary, ‘Bona Fide’ (4th Ed. 1951) at page 223.

I trust that I have sufficiently covered the questions posed by the Commission. If we might be of any further assistance, please do not hesitate to call upon us.

With kind personal regards,
Sincerely,

Alexander S. Macaulay
Assistant Attorney General

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