

1972 S.C. Op. Atty. Gen. 81 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3278, 1972 WL 20422

Office of the Attorney General

State of South Carolina

Opinion No. 3278

March 10, 1972

**\*1** The United States Constitution severely restricts a states regulation of out-of-state shrimpers in its territorial waters.

TO: Member  
House of Representatives  
Beaufort County

In reply to your inquiry concerning out-of-state shrimpers, the Constitution of the United States and decisions of the United States Supreme Court greatly restrict the exercise of a state's police powers in matters related to interstate commerce and rights of citizens of other states. A state may not exclude out-of-state shrimpers from the waters within its territorial limits if resident shrimpers are not also excluded. Nor may it in any other way unreasonably discriminate against out-of-state shrimpers. The State may, however, make distinctions between in-state and out-of-state shrimpers if the State can show a rational justification for the distinction other than the desire to prohibit out-of-state shrimpers from its territorial waters.

The Privileges and Immunities Clause of the United States Constitution guarantees to citizens of other states the same rights granted to residents of a state. Likewise, the Commerce Clause of the United States Constitution prohibits states from burdening interstate commerce.

The leading case on the subject matter is [Toomer v. Witsell, 334 U.S. 385, 92 L.Ed. 1460 \(1948\)](#), which arose in South Carolina and involved the constitutionality of statutes regulating shrimping. In [Toomer](#) the Court determined that a South Carolina statute which required a non-resident to pay a license fee of \$2,500 and a resident to pay a license fee of \$5.00 before commercial shrimping would be permitted in the State's territorial waters was unconstitutional since the discriminatory practice against non-residents violated the Privileges and Immunities Clause.

The purpose of that clause, . . . is to outlaw classifications based on the fact of non-citizenship unless there is something to indicate that non-citizens constitute a peculiar source of evil at which the statute is aimed. [Toomer v. Witsell, 334 U.S. at 398.](#)

The [Toomer](#) Court, however, did not preclude the State from regulating the shrimping industry entirely, nor from making certain distinctions between residents and non-residents shrimping in its territorial waters.

The State is not without power, for example, to restrict the type of equipment used in its fisheries, to graduate license fees according to the size of the boats, or even to charge non-residents a differential which would merely compensate the State for any added enforcement burden they may impose or for any conservation expenditures from taxes which only residents pay. [Toomer v. Witsell, 334 U.S. at 398-9.](#)

This statement clearly sets forth the powers that the states have in this area. See also, [Mullaney v. Anderson, 96 L.Ed. 459, 342 U.S. 415 \(1952\).](#)

In addition, the [Toomer](#) Court found that a South Carolina statute which required all shrimp caught in the State's waters to be processed in the State was unconstitutional since it placed an undue burden on interstate commerce. The State could prohibit the exporting of shrimp caught in its water, but once the shrimp were permitted to leave the State and placed in the channels of interstate commerce, the State could not burden commerce with this type of restriction.

\*2 The Toomer case appears to be an explicit statement of the powers possessed by the State to regulate out-of-state shrimpers and certainly precludes any possibility that a state could prohibit only out-of-state shrimpers from entering the Sounds of Beaufort or any other sounds in the State. Distinctions between out-of-state and in-state shrimpers may be made by the State if the discriminatory practice is capable of a reasonable justification other than merely restricting the State's waters to residents and the practice does not burden interstate commerce.

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