



HENRY McMASTER  
ATTORNEY GENERAL

April 15, 2010

R. Allen Young, Esquire  
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Legal Department  
P. O. Box 745  
Mount Pleasant, South Carolina 29465

Dear Mr. Young:

We received your letter requesting an opinion of this Office concerning dealers in precious metals. As a way of background, you indicated that the Town of Mount Pleasant received an application for a license to sell precious metals. Specifically, it is the intent of the applicants to run a business from their home or office and to go out into other homes and conduct two hour parties for the purchase of precious metals. In other words, the applicants would schedule parties in the homes of various individuals as a way to buy and sell jewelry.

You asked whether S.C. Code § 40-54-20 “prohibit[s] the referenced business from buying precious metals at these ‘in house’ parties, rather than exclusively at their place of business (their home or office).” This opinion will address prior opinions of this Office, relevant statutes, and legislative intent.

### **Law/Analysis**

S.C. Code § 40-54-20 explains as follows:

No dealer<sup>1</sup> as defined herein shall operate in the State of South Carolina unless he first obtains a permit to engage in the business of purchasing precious metals from the local law

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<sup>1</sup> “Dealer” is defined as “any person, corporation, or partnership who buys precious metal or precious or semiprecious stones or gems from the general public, whether in bulk or in manufactured form, with an intent to obtain a monetary profit for himself or for a principal.” S.C. Code § 40-54-10(1).

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enforcement agency and operates only from a permanent place of business. No dealer shall operate upon public property nor from a vehicle, flea market, hotel room or similar temporary location.

In an opinion of this Office dated February 6, 1995, when analyzing the legislative intent of the language “permanent place of business” under S.C. Code § 40-54-20, we stated as follows:

Under the well established canons of statutory construction, “the legislative intent must prevail if it can be reasonably discovered in the language used, which must be construed in the light of the intended purpose of the [s]tatutes.” (citations omitted). It is evident from the words used therein, taken in their ordinary and popular significance, that the legislature specifically intended to **exclude leases at temporary locations from the presumption of permanency** since a temporary location is not a permanent place of business. . . .

[I]t is our informal opinion that the legislature made clear that regardless of the length of time a dealer leases from a temporary location, a permit will not be issued. Moreover, the presumption of permanency arises only when a dealer leases from a permanent place of business - a fixed premises, not when he leases from a temporary location.

Op. S.C. Atty. Gen., February 6, 1995 (emphasis added).

A “permanent place of business” is defined in § 40-54-10 as “a fixed premises either owned by the dealer or leased by him. One year’s lease is a presumption of permanency.” S.C. Code § 40-54-10(5). You indicated that the applicants intend to run the business from their permanent home or an office space. They would simply go into the homes of others for the two-hour parties<sup>2</sup> to sell jewelry. The applicants schedule the two-hour parties in the homes of various individuals, but there is no lease involved. The applicant’s personal home or office would be considered a fixed premises that is owned by him or her.

S.C. Code § 40-54-10(6) defines “places proposed to do business” as “the counties or municipalities in which the dealer intends to purchase precious metals . . . .” The fact that this definition is included in the statute indicates that the dealer is permitted to move about counties and municipalities purchasing precious metals. A permanent place of business is required; however, the statute does not require the dealer to never leave his or her permanent place of business.

Nevertheless, S.C. Code § 40-54-20 specifically lists places where a dealer may not conduct business as follows:

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<sup>2</sup> Similar to Tupperware or Southern Living parties

No dealer shall operate upon public property nor from a vehicle, flea market, hotel room or similar temporary location.

Under the rule of statutory construction “expressio unis est exclusio alterius,” exceptions or inclusions “made in a statute give rise to strong inference that no other exceptions were intended.” Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker, 320 S.E.2d 458 (1984). See also, Riverwoods, LLC v. County of Charleston, 563 S.E.2d 651 (2002). Since “in house parties,” or something of the like, is not mentioned and does not fall under one of the exceptions<sup>3</sup> for where business may be conducted, one may infer that it is permissible for dealers to conduct “in house parties.” This conclusion does not torture the legislative intent.<sup>4</sup>

The legislative intent is likely to protect customers and prevent criminal or fraudulent activity. If a business is transient, always in various temporary locations, and never in a permanent place, then the business will be much more difficult to monitor. A permanent place of business is necessary for communication purposes between the business and the state.<sup>5</sup> With a hotel or flea market,<sup>6</sup> dealers must lease or rent the space. “In house parties” can be distinguished in that no lease or rent is necessary because various individuals simply volunteer their homes to host the two-hour parties. A vehicle<sup>7</sup> is the epitome of a temporary location; there is no sense of permanency or way for the State to identify where the permanent business is located. Here, the applicants have an established permanent place of business, their personal home or office. The two-hour “in house parties” are not

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<sup>3</sup> “In house parties” would not be considered “public property,” “a vehicle,” a “flea market,” or a “hotel room.” An argument can be made that an “in house party” should be considered a temporary location; however, the “in house party” is simply a two-hour event not an attempt to create a business location. Even while the party is occurring, the permanent place of business is still in operation sorting jewelry, following up on quality control, and talking with customers who call or visit.

<sup>4</sup> “Expressio unius est alterius . . . should be applied to accomplish the legislative intention, and not to defeat it.” Home Building & Loan Ass’n v. City of Spartanburg, 194 S.E. 139 (1937).

<sup>5</sup> S.C. Code § 40-54-20 (“ . . . The form of the permit to engage in the business of purchasing precious metals shall be prescribed by the State Law Enforcement Division . . . . Upon receipt of such application for a permit, the local law enforcement agency shall cause an investigation of such person’s business and personal background to be made.” Therefore, it is necessary for the State to have record of the permanent place of business and other information to identify the persons managing or conducting the business.)

<sup>6</sup> S.C. Code § 40-54-20 (“no dealer shall operate . . . [from a] flea market, hotel room or similar temporary location.”)

<sup>7</sup> S.C. Code § 40-54-20 (“no dealer shall operate . . . from a vehicle . . .”)

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intended to be a substitute for a permanent place of business, the parties are simply a method of marketing or sales technique.

### Conclusion

While legislative or judicial clarification is necessary, it is the opinion of this Office that a court would likely find that the home or office of the applicants is a "permanent place of business" under § 40-54-10(5). Therefore, the applicants satisfy the requirements of § 40-54-20 by operating the business out of their personal home or office.

It is also the opinion of this Office that the two-hour "in house parties" do not violate the statute nor undermine the "permanent place of business" requirement contained in § 40-54-10(5) and § 40-54-20. Even though transactions or sales occur for a temporary period of time during the "in house parties," such a place does not fall under the category of temporary location because the business is simultaneously headquartered and being operated from the permanent location. It does not appear to be the intent of the legislature to prevent dealers from scheduling short, two-hour parties in the homes of various individuals for the purpose of buying or selling jewelry. There is no lease created for the two-hour parties; various individuals simply volunteer their homes to host the parties. The legislature did not mention "in house parties," or something of the like, in the list of areas where dealers shall not operate. In conclusion, based upon the information provided to us, the applicants satisfy the permanent place of business requirements of S.C. Code § 40-54-20, and the applicants do not violate the statute by conducting "in house parties."

Sincerely,

Henry McMaster  
Attorney General



By: Leigha Blackwell  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General