



ALAN WILSON  
ATTORNEY GENERAL

April 24, 2012

The Honorable Glenn G. Reese  
Senator, District No. 11  
P. O. Box 142  
Columbia, South Carolina 29202

Dear Senator Reese:

We received your letter requesting an opinion of this office concerning allegations of below-cost sales of gasoline outlined in a January 27, 2012 letter from Mr. Mark Rhodes. In his letter, Mr. Rhodes references competition from a Quick Trip convenience store and makes overtures of below-cost gasoline sales. As you know, opinions written by this office only address law, not facts. As such, we cannot opine on the veracity of Mr. Rhodes' factual allegations.

With regard to the legality of the practices alleged by Mr. Rhodes, S.C. Code Ann. § 39-5-325 provides a prohibition against below-cost gasoline sales. S.C. Code Ann. § 39-5-325(A) reads as follows:

(A) Except as otherwise permitted to meet competition as provided by this chapter, it is declared an *unfair trade practice* and unlawful for any person who is in the retail business of selling motor fuel to sell motor fuel of like grade and quality at retail at a price which is below the cost of acquiring the product plus taxes and transportation where the intent or effect is to destroy or substantially lessen competition or to injure a competitor. [Emphasis added.]

The plain language of this statute indicates that below-cost sales of gasoline are illegal in South Carolina.

In addition, the South Carolina Unfair Trade Practices Act, S.C. Code Ann. § 39-5-10 through 39-5-170, addresses unfair trade practices. It provides statutory relief for persons injured by an unfair trade practice in S.C. Code Ann. § 39-5-140(a), which reads as follows:

(a) Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by Section 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages. If the court finds that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such

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other relief as it deems necessary or proper. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs.

It is this office's opinion that the owner of a gasoline station injured by a competitor's below-cost sales of gasoline could file a lawsuit to seek relief under this statute.

It should be noted that S.C. Code Ann. § 39-5-325(B) provides several exemptions to the general prohibition against below-cost gasoline sales in S.C. Code Ann. § 39-5-325(A):

(B) The provisions of subsection (A) shall not apply in the following situations where:

- (1) motor fuel is advertised, offered for sale, or sold in a bona fide clearance sale for the purpose of discontinuing trade in such motor fuel, and the advertising, offer to sell, or sale shall state the reason therefor and the quantity of such motor fuel advertised, offered for sale, or to be sold;
- (2) motor fuel is sold upon the final liquidation of a business;
- (3) motor fuel is advertised, offered for sale, or sold by any fiduciary or other officer under the order or direction of any court;
- (4) motor fuel is sold for promotional purposes including, but not limited to, grand opening, anniversary, or promotional sales. However, the total number of days for promotional sales shall not exceed fourteen days within each calendar year; or
- (5) an isolated or inadvertent incident occurs that does not exceed two days.

I hope that this information is useful to you and Mr. Rhodes. Please let me know if you have further questions.

Sincerely,



Robert D. Cook  
Deputy Attorney General