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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

May 13, 1999

The Honorable Lewis R. Vaughn
Member, House of Representatives
388 Pincroft Drive
Taylors, South Carolina 29687

RE: Informal Opinion

Dear Representative Vaughn:

Attorney General Condon has forwarded your opinion request to me for reply. You have asked three questions regarding the recently enacted City of Greer hospitality tax ordinance.

Question 1

Can a municipality require businesses to pay the "hospitality" tax on revenues collected from the specified sales as of October 1, 1998, when the businesses were not officially notified of the requirements of the ordinance until well after that date and, therefore, had no opportunity to collect those taxes during that period between the effective date and the subsequent date of notification?

The imposition of municipal hospitality taxes is governed by S.C. Code Ann. § 6-1-700 *et seq.*, entitled the "Local Hospitality Tax Act." (hereinafter the "Act"). The hospitality tax must be imposed by ordinance of the local governing body. S.C. Code Ann. § 6-1-720. Unlike the requirements for the adoption of most types of ordinances, however, the Act requires that the hospitality tax ordinance must be adopted by a positive majority

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vote of the local governing body. Id. Positive majority means a vote for adoption by the majority of the members of the entire governing body, whether present or not. S.C. Code Ann. § 6-1-710(3). Keeping in mind the positive majority requirement, in adopting a municipal hospitality tax ordinance, as it would when adopting other municipal ordinances, the governing body of a municipality would follow S.C. Code Ann. § 5-7-270. This Code section provides as follows:

Every proposed ordinance shall be introduced in writing and in the form required for final adoption. Each municipality shall by ordinance establish its own rules and procedures as to adoption of ordinances. No ordinance shall have the force of law until it shall have been read two times on two separate days with at least six days between each reading.

As a general rule, ordinances shall take immediate effect unless otherwise provided. McQuillin, Municipal Corporations, § 15.39 (3rd Ed. 1996). Thus, where publication is not required and there is no time specified in the charter or ordinance, the ordinance takes effect from the date of its passage. Id. Where a definite time is prescribed before an ordinance shall take effect or go into force, the ordinance is effective from the expiration of the time prescribed, and not from the date of its passage. Id. Unless required by law, publication of an ordinance is not required for the purpose of establishing the effective date of the ordinance. Id. Citizens are charged with knowledge of existing law. Labruce v. City of North Charleston, 268 S.C. 465, 234 S.E.2d 866 (1977). Accordingly, cognizance of city ordinances is presumed. Id.

The City of Greer adopted the hospitality tax on September 29, 1998, with the effective date of the ordinance set as October 1, 1998. Section 5-7-270 does not require post-adoption publication or notice and, therefore, the ordinance became effective on the date set forth in the ordinance.¹ While this Office sympathizes with the plight of the businesses in this case, we must adhere to the law. According to the law, since post-adoption publication or notice is not required and citizens are presumed to know the law

¹ This conclusion is based on the state law. I have not been informed of whether the City of Greer has adopted a city ordinance requiring publication or notice. If such is the case, the City, of course, would be required to follow the notice requirements of the ordinance. See Horry County v. City of Myrtle Beach, 288 S.C. 412, 343 S.E.2d 36 (1986) (compliance with city ordinances requiring notice was necessary to the validity of recently enacted notice).

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exists, the businesses would be required to collect the hospitality tax from the date the ordinance went into effect. This is true despite the fact that the businesses did not receive official notice of the ordinance's existence until a later date. Of course, since the city council had discretion in whether to enact the ordinance, the city council may wish to rectify the notice problem by providing the affected businesses with a grace period.

Question 2

State Statute 6-1-710(2) describes the "Local hospitality tax" as "a tax on the sales of prepared meals and beverages sold ..." Does the statute allow for municipalities to exempt certain establishments that engage in such business, while it taxes others?

The Act defines "Local hospitality tax" as "a tax on the sales of prepared meals and beverages sold in establishments or sales of prepared meals and beverages sold in establishments licensed for on-premises consumption of alcoholic beverages, beer, or wine." S.C. Code Ann. § 6-1-710(2). Unfortunately, the Act does not define the terms "prepared meals and beverages" and does not explain what "establishments" are subject to the Act. In addition, the Act does not address whether a municipality may exempt businesses that are not primarily engaged in the sale of prepared meals and beverages from the hospitality tax. Since the question of whether a municipality may exempt businesses not primarily engaged in the sale of prepared meals and beverages has not been addressed by the courts and the Act is unclear on this point, I am unable to advise you definitively on this question. However, you may wish to consult with the Department of Revenue regarding this issue. That agency is in a better position to interpret the Act and may have knowledge as to how other municipalities are proceeding under the Act. Finally, a party subject to the ordinance may wish to seek a declaratory judgment for clarification of this point.

Question 3

Does the Statute permit municipalities to require a separate business license for the accommodations, food, and beverage sales portion of a business that engages in multiple services to consumers, some of which are not accommodations, food, and beverage sales, when all are housed collectively at one location?

The Act does not speak to the question of business licenses in any way. As a general rule, the power to impose a license tax upon a business does not authorize a division of the

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business into constituent elements, parts or incident. McQuillin, Municipal Corporations, § 26.39 (3rd Ed. 1995) A single taxable privilege may not be separated into its various component elements as ordinarily recognized, and a separate license imposed on each element. Id. For example, dividing a single merchandising privilege into many and requiring separate licenses to sell special articles which necessarily belong to one legal privilege, and which the law permits to be sold under one license is improper. Id.

On the other hand, however, many types of businesses may be and often are conducted from the same premises by the same owner, resulting in the lawful imposition of more than one license tax. Id. If the businesses are additional and different, and not merely component parts of a single licensed privilege, they may be subjected to different license taxes or fees, although it frequently is a close question whether particular business enterprises, operations or activities of the same owner are inseparable components of a single business or are different businesses within this rule. Id.; See Wood-Mendenhall Co. v. City of Greer, 88 S.C. 249, 70 S.E. 724 (1911)(ability to require second license turns on whether one operation is separate and independent from other or is merely incidental thereto).

Based on the foregoing, it is not improper for a city to require a business to obtain more than one license if the businesses are additional and different and not merely incidental parts of a single license privilege. Such a decision is frequently a close question and must be made after reviewing the nature of the business in question.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General