



ALAN WILSON  
ATTORNEY GENERAL

November 25, 2013

The Honorable Murrell Smith  
District No. 67-Sumter-Clarendon Counties  
420-B Blatt Building  
Columbia, SC 29211

Representative Smith:

By your letter dated October 22, 2013, you have asked for the opinion of this Office regarding the fabrication, transport and display of working water distillation units. Per your letter you explain a constituent, Mr. Sid Singleton, owns a steel fabrication company in Sumter and, as a result of numerous inquiries, has started fabricating water distillation units for both display and sale. Continuing, you state that during the fabrication process, Mr. Singleton was advised "that there may be some special laws and/or regulations" regarding distillation units as they can be used as liquor and/or beer distilleries. Your further indicate, "Mr. Singleton wants to make sure that he is not running afoul of any Federal or State Laws or Regulations" and have attached a letter in which Mr. Singleton asks us to advise him on what is required in order to acquire written permission to fabricate, transport and display water distillation units. Our response follows.

#### Law/Analysis

As an initial matter, we note Mr. Singleton's question appears to involve a request for legal advice as opposed to a legal opinion, and thus could be construed as outside of the scope of the questions typically addressed by this Office. See Op. S.C. Atty. Gen., 2013 WL 3960434 (July 19, 2013) (explaining that questions related to legal liabilities of an entity are questions of legal advice and are outside of the scope of an opinion request). Nevertheless, we will address this issue by providing a previous legal opinion on a similar matter and discussing what we believe to be the relevant legal authorities.

As indicated above, a similar issue was previously addressed by this Office in 1974. Op. S.C. Atty. Gen., 1974 WL 27958 (September 17, 1974). In our 1974 opinion, which relates to the display and construction of a prototype liquor still, we noted South Carolina law "makes it unlawful to manufacture a still or any other similar device to be used for the purpose of making

alcoholic liquors.” Id. We further explained that federal law “requires the issuance of a permit prior to setting up a still, the registration of a still” and imposes “criminal penalties” for failing to comply with such requirements. Id. As a result, our 1974 opinion concluded, “[i]t would be advisable to approach both the Federal Bureau of Alcohol, Tobacco and Firearms and the State Alcoholic Beverage Control Commission with your proposal and learn what specific objections, if any, either has to the construction of a ‘model’ still which will not be used for distilling purposes.” Id. We further advised, “[a]lthough I cannot speak for either agency, it is possible that these questions might be resolved if your ‘model’ still is constructed in a manner so as to be incapable of distilling spirits.” Id.

We now reaffirm our previous opinion because, while the law has been revised insofar as the relevant versions of both the South Carolina and United States Code have been updated, state and federal law continue to place restrictions on distillation units that could be utilized to manufacture alcohol, and as such, our advice remains the same. See Op. S.C. Atty. Gen., 2013 WL 3762706 (July 1, 2013) (“[W]e stand by our previous opinion regarding this issue since this Office will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law.”); Op. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009) (“This Office recognizes a long-standing rule that we will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law.”); Op. S.C. Atty. Gen., 2006 WL 2849807 (September 29, 2006) (same); Op. S.C. Atty. Gen., 2005 WL 2250210 (September 8, 2005) (same); Op. S.C. Atty. Gen., 1986 WL 289899 (October 3, 1986) (same); Op. S.C. Atty. Gen., 1984 WL 249796 (April 9, 1984) (same).

Similar to Section 4-97 of the 1962 version of the South Carolina Code, which was relied upon in our 1974 opinion, Section 61-6-4100 of the South Carolina Code states, “[i]t is unlawful for a person in this State to manufacture, sell, give, or have in his possession a distillery, commonly called a still, or any integral part of a distillery, or an apparatus, appliance, device, or substitute therefor to be used for the purpose of manufacturing alcoholic liquors, in violation of the laws of this State.” S.C. Code Ann. § 61-6-4100 (2009). Section 61-6-4100 further adds, “[t]he unexplained possession of any part of a still, apparatus or appliance, or any device or substitute therefor, commonly or generally used for or that is suitable to be used in the manufacture of prohibited alcoholic liquors is prima facie evidence of the violation of this section.” S.C. Code Ann. § 61-6-4100. Thus to summarize, South Carolina law still prohibits the manufacture, sale and possession of an apparatus which could be used “for the purpose of manufacturing alcoholic liquors” and “the unexplained possession” of such a unit is, under state law, “prima facie evidence” of a violation of state law. S.C. Code Ann. § 61-6-4100.

Moreover, federal law also continues to place restrictions on stills.<sup>1</sup> For example, Chapter 26, Section 5179, subsection (a) of the United States Code requires that any distilling

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<sup>1</sup> Notably, the Supreme Court of the United States has explained that the federal tax statutes “proscribing the carrying on of the enterprise of illegal distillation, is one of the most comprehensive of criminal statutes designed to stop production and sale of untaxed liquor.” U.S. v. Gainey, 380 U.S. 63, 67 (1965).

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apparatus be registered upon "set up" with the type of still, its capacity, owner, place of residence and purpose declared. 26 U.S.C. § 5179(a). Further, Section 5601(a)(1) of the Internal Revenue Code also speaks of registration requirements. 26 U.S.C. § 5601(a)(1). Additionally, Section 5601(a)(2) penalizes a failure to file an application seeking registration of a still. 26 U.S.C. § 5601(a)(2). Thus, as was the case at the time of this Office's 1974 opinion, federal law continues to place restrictions on distillation units such as those referenced in Mr. Singleton's letter.

In light of the existence of the aforementioned authorities, we decline to overrule our previous opinion on this matter. Rather, we reiterate the advice contained in our 1974 opinion and advise Mr. Singleton that the most prudent way to "acquire written permission to fabricate, transport and display" distillation units would be to approach the appropriate authorities and simply ask. Op. S.C. Atty. Gen., 1974 WL (September 17, 1974) ("It would be advisable to approach both the Federal Bureau of Alcohol, Tobacco and Firearms and the State Alcoholic Beverage Control Commission[.]"). Alternatively, as mentioned in our previous opinion, if the design of the distillation unit could be modified in such a way that it would be unable to "distill spirits," it would seem Mr. Singleton's questions would be resolved. Op. S.C. Atty. Gen., 1974 WL (September 17, 1974) ("[I]t is possible that these questions might be resolved if your 'model' still is constructed in a manner so as to be incapable of distilling spirits.").

### Conclusion

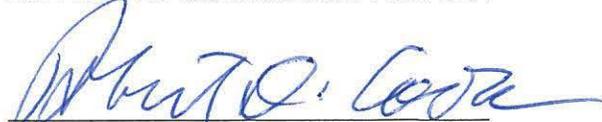
In conclusion, because state and federal law continue to place restrictions and regulations on distillation units, we reaffirm our 1974 opinion on this issue. As a result, it is our continued belief that the best way for Mr. Singleton to acquire permission to fabricate, transport and display such units would be to either: (1) approach the appropriate authorities and ask; or (2) if possible, modify the distillation units to where they could only be utilized to distill water as opposed to alcohol.

Sincerely,



Brendan McDonald  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General