

The State of South Carolina



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December 9, 1991

The Honorable Joyce C. Hearn  
Commissioner, South Carolina  
Alcoholic Beverage Control Commission  
1205 Pendleton Street  
Columbia, South Carolina 29201

Dear Commissioner Hearn:

Referencing S.C. Code Ann. § 61-5-50 (1990), you have asked for the opinion of this Office as to the date to be used for "grandfathering" establishments in established locations in the issuance of certain alcoholic beverage licenses: whether the applicable date should be November 7, 1962 or November 7, 1972?

Chronology

To respond to your inquiry, it is helpful to review the events (and their effective dates) which led to the passage of what is now § 61-5-50.

1. Act No. 1063 was adopted by the General Assembly and was approved by the Governor on March 16, 1972. Section 7 specified: "This act shall take effect when the Constitution is amended whereby the provisions of this act shall be authorized." Upon amendment of the Constitution, the sale of alcoholic beverages in containers of two ounces or less would then be authorized. The Alcoholic Beverage Control Commission would be authorized to grant licenses to certain business establishments meeting the statutory requirements such as those specified in section 10.3 of section 1 of the act, including part (c) to the effect that:

[The Commission may grant a license upon finding that: ...]

(c) As to any business establishments or locations established after the effective date of this act, the

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provisions of Section 4-33.1 of the 1962 Code have been complied with; ... 1/ [Emphasis added.]

2. Prior to Act No. 1063 of 1972 taking effect, amendment to the State Constitution was required, necessitating a referendum. 2/ S.C. Const. art. XVI, § 1. The required referendum was held on November 7, 1972, as a part of the general election, with favorable results.

3. As was required by S.C. Const. art. XVI, § 1, the results of the referendum to amend the Constitution were ratified by Act No. 122 of 1973, effective March 28, 1973.

4. Section 4-29.3 [now § 61-5-50] was added to the 1962 Code of Laws in a paper supplement. The text in the supplement provided as to part (c):

[The Commission may grant a license upon finding that: ...]

(c) As to any business establishments or locations established after the effective date of this article, the provisions of § 4-33.1 have been complied with; ... [Emphasis added.]

"The article" refers to Article 2.2 (regarding the sale, etc. of alcoholic beverages in containers of two ounces or less). An editor's note in the 1975 cumulative supplement to the 1976 Code, following § 4-29, cited the language of section 7 of Act No. 1063 quoted above and stated: "Such an amendment was proposed by 1972 Act No. 1632, and approved by a majority of the qualified electors at the general election held November 7, 1972."

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1/ Section 4-33.1 of the 1962 Code is now § 61-3-440 of the 1976 Code (1990), dealing with locality of such establishments vis a vis churches, schools, or playgrounds. It is not necessary to examine this statute to resolve your question.

2/ See also Act No. 1632 of 1972, a joint resolution proposing a new Article VIII-A for the Constitution, requiring submission to the electors "at the next general election for representatives." This enactment was ratified "the 22nd day of February," presumably in 1972.

5. The Code of Laws was recompiled in 1976. Former § 4-29.3 was recodified as § 61-5-50. In the initial edition of volume 20 of the 1976 Code, the language of part (c) quoted previously, stated:

[The Commission may grant a license upon finding that: ...]

(c) As to any business establishments or locations established after November 7, 1962, the provisions of § 61-3-440 have been complied with; ... [Emphasis added.]

6. Section 61-5-50 was amended by Act No. 469 of 1986 to add certain notice requirements with respect to application for licensure. The language of part (c), as quoted in number 5, above, remained unchanged, however, so that the reference to "November 7, 1962" remained.

7. Volume 20 of the 1976 Code of Laws was revised in 1990, so that § 61-5-50 now appears in Volume 20A of the 1976 Code. The language of part (c), as quoted in number 5, above, remained unchanged, however, so that the reference to "November 7, 1962" remained.

#### Discussion

The primary obligation of both the courts and this Office, in interpreting statutes, is to determine and effectuate legislative intent, if at all possible. McGlohon v. Harlan, 254 S.C. 207, 174 S.E.2d 753 (1970). In construing a statute, absurd results should be avoided; as stated in State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964), citing Stackhouse v. County Board, 86 S.C. 419, 68 S.E. 561,

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect.

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The General Assembly could have selected any date it wished as the effective date of Act No. 1063 of 1972. The General Assembly recognized that a constitutional amendment would be necessary to authorize the actions to be permitted by Act No. 1063 and obviously specified the effective date in terms requiring reference to an outside event: the favorable constitutional amendment. The date "November 7, 1962" was not a part of the original legislation and was obviously added later by codifiers; selling alcoholic beverages in "mini-bottles" certainly was not constitutionally permissible on or around November 7, 1962, and there is no other significant event to which we can relate that date with respect to alcoholic beverages.

On the other hand, the favorable referendum to amend the constitution was held on November 7, 1972. At least the month and day correspond to the language subsequently added to § 61-5-50. We are of the view that the reference to November 7, 1962 in § 61-5-50 was likely a typographical error which has been perpetuated in subsequent recomputations or revisions of the Code; reference to that date, in the absence of constitutional authorization and in view of the actual referendum date, seems to lead to absurd results. We are of the view that the actual "grandfather" date should be November 7, 1972 rather than November 7, 1962 for the foregoing reasons. 3/

This interpretation seems to have been adopted judicially, as well. In St. Philip's Episcopal Church v. South Carolina Alcoholic Beverage Control Commission, 285 S.C. 335, 329 S.E.2d 454 (Ct. App. 1985), the Court of Appeals stated:

Section 61-5-50(c) provides that business establishments or locations established after November 7, 1972, must comply with the provisions of Section 61-3-440. Section 61-3-440 in turn provides, among other things, that the Commission shall not grant a license to a business located within 300 feet of a church.

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3/ An argument could be made that the constitutional amendment was not effective until March 28, 1973, when ratified by joint resolution of the General Assembly. It appears that the date of the favorable referendum has been commonly accepted as the "grandfathering" date, however.

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Based upon its construction of these code sections and certain findings of fact as to the nature of businesses established at this location prior to November 7, 1972, the Commission concluded that it is not prohibited from granting the license. ... [Emphasis added.]

329 S.E.2d at 455. Thus, the Court of Appeals, as did the ABC Commission apparently, 4/ disregarded the reference to "November 7, 1962" and substituted "November 7, 1972" in its place.

For the foregoing reasons, it is our opinion that the date to be used for "grandfathering" establishments as provided in § 61-5-50(c) should be November 7, 1972.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions

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4/ The administrative interpretation of a statute by the agency charged with its enforcement is entitled to great weight and should not be disregarded in the absence of a cogent and compelling reason. Faile v. South Carolina Employment Security Comm'n, 267 S.C. 536, 230 S.E.2d 219 (1976).