



278-2
Library

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3970

May 21, 1987

The Honorable Marvin L. Baughman
Mayor, Town of Wagener
P. O. Box 408
Wagener, South Carolina 29164

Dear Mayor Baughman:

In a letter to this Office on behalf of Chief Widener the validity of two ordinances of the Town of Wagener was questioned. One ordinance deals with the consumption and possession of alcoholic beverages in open containers in any public place while the other deals with the regulation of the hours of sale of alcoholic beverages.

I am enclosing a copy of a prior opinion of this Office, 1984 Op. No. 84-101, which referenced a provision codified as Section 61-5-190 of the Code which states:

The South Carolina Alcoholic Beverage Control Commission is the sole and exclusive authority empowered to regulate the operation of all retail locations authorized to sell beer, wine or alcoholic beverages and is authorized to establish such conditions or restrictions which the Commission in its discretion considers necessary before issuing or renewing any license or permit.

The opinion concluded that counties may not restrict by local ordinance the hours beer and wine may be sold. The opinion also stated that it has been consistently held that the State has preempted the regulation of alcoholic liquors and thus local governing bodies are prohibited from regulating the hours alcoholic liquors may be sold. Another opinion of this Office dated October 8, 1985 determined that such conclusions were also applicable to municipalities. Therefore, the Wagener ordinance which regulates the hours of sale of alcoholic beverages deals with a matter that has been given to the exclusive authority of the State and the State ABC Commission to regulate. As a result, such ordinance is no longer valid.

The Honorable Marvin L. Baughman

Page 2

May 21, 1987

As to the other ordinance dealing with the consumption and possession of alcoholic beverages in open containers in public places not licensed to sell such beverages, I am enclosing a copy of another prior opinion of this Office, 1967 Op. No. 2282, which again states that with regard to alcoholic liquor, the State has preempted the regulation of such. However, as to the possession and consumption of beer and similar beverages, municipalities may adopt ordinances concerning such. Therefore, a municipality cannot enact or enforce an ordinance dealing with the possession and consumption of alcoholic liquors. As to the regulation of such, reference should be made to State law provisions regulating the possession and consumption of liquor. As to any particular problems in that area, you may wish to discuss such with the ABC Commission.

As to controlling the possession and consumption of beer and similar beverages, as stated in the opinion above, such is within the authority of a municipality. Therefore, I see no problems with the regulation by the Town of the possession and consumption of beer and wine. However, because the ordinance as presently drafted regulates "intoxicating liquor" in addition to beer and wine, as pointed out in the 1967 opinion, a problem may exist in its enforcement. The opinion noted that in the case of an ordinance similar to the Wagener ordinance, "(b)ecause of the use of the term intoxicating beverages, the improper matter, i.e. the reference to whiskey, cannot be clearly distinguished and separated from the area within which the municipality was competent to legislate, ... the whole ordinance must be declared void and of no effect inasmuch as a portion of it is invalid." However, as pointed out in the prior opinion, your Town could consider enacting another ordinance dealing exclusively with beer and wine. Therefore, I suggest you discuss such with your town attorney in an effort to clear any ambiguities that may exist in the present ordinance.

If there is anything further, please advise.

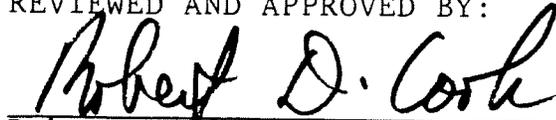
Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an
Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions