

1981 WL 158062 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 1, 1981

***1 RE: § 61-9-110**

The Honorable John P. Gardner, Jr.
Member
South Carolina House of Representatives
Post Office Box 167
Darlington, South Carolina 29532

Dear John:

Thank you for your letter of October 21, 1981, concerning the above. In that letter you posed the question whether drinking beer on Sunday in the parking lot of a location licensed to sell beer and wine would constitute a violation of § 61-9-110, Code of Laws of South Carolina, 1976, as amended. It is the opinion of this office that such conduct violates § 61-9-110.

Section 61-9-110 provides:

Any person who drinks beer or wine or possesses beer or wine in an open container between the hours of 12 o'clock Saturday night and sunrise Monday morning at any place licensed to sell beer or wine shall be deemed guilty of a misdemeanor . . . [emphasis added].

The issue, thus, becomes whether the parking lot of a licensed establishment is deemed a part of the licensed premises.

R7-81, Rules and Alcoholic Beverage Control ?? as follows:

???

The Commission has consistently construed this regulation to include as part of the licensed premises adjoining parking lots used by customers or employees of the business. This longstanding construction of the Commission's own regulation is entitled to great weight by the courts. See, e.g. [South Carolina State Highway Department v. Fort Federman](#), 177 F.Supp. 76, aff. 278 F.2d 921, cert. den. 364 U.S. 910; [Faile v. South Carolina Employment Security Commission](#), 267 S.C. 536, 230 S.E.2d 219.

Construing § 61-9-110 as inclusive of the parking lot is supported by several cases of the South Carolina Supreme Court. In [Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376, the Court construed § 4-95 of the 1962 Code [predecessor to § 61-13-260], particularly the phrase a place of business, as including the parking lot utilized by a licensed location. The Court noted that '[u]nder prior decisions of this court construing this Code section, there is no doubt that the parking lot in the instant case was a part of the place of business of the respondent.' The Court previously reached similar conclusions in the cases of [State v. Phillips](#), 210 S.C. 249, 42 S.E.2d 339, and [State v. Schumbert](#), 195 S.C. 387, 11 S.E.2d 523, holding that the parking lots of the licensed places of business were parts of the places of business. There is no reason to perceive that the court's construction of § 61-9-110 would differ from its prior constructions of § 4-95 where the place of business has been defined to include the parking lot serving the business.

Accordingly, it is the opinion of this office that an individual who consumes an open beer between the hours of 12 o'clock Saturday night and sunrise Monday morning in the parking lot of an establishment licensed to sell beer, is in violation of § 61-9-110.

With kindest regards, I remain
Very truly yours,

Edwin E. Evans
*2 Assistant Attorney General

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