

1978 WL 34974 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 10, 1978

**\*1 RE: Amendments to Election and Liquor Laws**

Honorable Jean Hoefler Toal  
House of Representatives

c/o House Judiciary Committee  
Post Office Box 11867  
Columbia, South Carolina 29211

Dear Representative Toal:

Inquiry has been made of this Office regarding present statutory prohibitions to the sales of beer and wine and alcoholic liquors on election days. It is my understanding that the Legislature wishes to authorize the sale of alcoholic liquors in containers of two ounces or less (minibottles) and beer and wine on election days.

A review of the present statutory law reveals two Code sections which presently prohibit or otherwise restrict the sale of beer and wine or 'minibottles' on election day. Section 61-13-380 of the 1976 Code as amended by R-589 of 1978 explicitly prohibits the sale of alcoholic liquors on statewide election days. In addition, [§ 7-25-90 of the 1976 Code](#), located within the Title pertaining to elections prohibits the selling or treating of a voter to either a malt beverage or intoxicating beverage within one mile of a voting place. It appears that each of these sections would have to be amended to accomplish the desired results.

The following underlined addition to § 61-13-380 would in my opinion limit its applicability to retail liquor sales. It shall be unlawful for any retail liquor dealer to sell alcoholic liquors on Sunday, on statewide election days, or during periods proclaimed by the Governor in the interest of law and order or public morals and decorum. Full authority to proclaim such periods is hereby conferred upon the Governor in addition to all other powers in him now reposed.

Please note that the scope of § 61-13-380 is much broader than an election day prohibition.

In light of the intent to permit beer and wine or 'minibottle' sales on election days, it would appear that the retention of [§ 7-25-90](#) together with § 61-13-380 would be superfluous. Thus, repeal of [§ 7-25-90](#) with the amendment to § 61-13-380 would appear to accurately accomplish the intended goal.

Reenactment of Article I, Chapter 5, of Title 61 ('Minibottle Act') without additional revision would not expressly repeal or limit the proscriptive provisions of §§ 61-13-380 or [7-25-90](#). The 'Minibottle Act' does not speak to election day sales, and, therefore, § 61-13-380 would remain subject to the interpretation that minibottles as alcoholic beverages fall within the election day proscription. Repeal by implication is not favored, thus, the express prohibition could prevail over an act permitted only by implied permission. Reenactment of the 'Minibottle Act' would have no effect upon the prohibition of beer and wine sales found within [§ 7-25-90](#).

If this Office can be of further assistance please contact us.

Very truly yours,

Edwin E. Evans  
Assistant Attorney General

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