

1976 S.C. Op. Atty. Gen. 420 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4549, 1976 WL 23165

Office of the Attorney General

State of South Carolina

Opinion No. 4549

DECEMBER 21, 1976

*1 To lawfully sell or otherwise dispense alcoholic beverages, a pharmacist must be licensed as a liquor dealer.

TO: Kenneth E. Allen
Director
South Carolina Alcoholic Beverage Control Commission

QUESTION PRESENTED:

May hospital pharmacists sell beer and wine or alcoholic beverages to hospitalized patients?

AUTHORITIES CITED:

§§ 4-1, et seq., Code of Laws of South Carolina, 1962, as amended; §§ 4-201, et seq., Code of Laws of South Carolina, 1962, as amended;

§§ 4-301, et seq., Code of Laws of South Carolina, 1962, as amended;

§§ 56-;301, et seq., Code of Laws of South Carolina, 1962, as amended;

45 Am. Jur.2d, Intoxicating Liquors;

48 CJS Intoxicating Liquors;

[49 ALR 588](#);

[133 ALR 1140](#);

[State v. Atkinson](#), 33 S.C. 100, 11 S.E. 693;

[Lambert v. Yellowly](#), 272 U.S. 581;

[James Edward's Breweries v. Day](#), 265 U.S. 254;

[State v. Mellor](#), 117 A 875, 140 Md. 364;

[Smedley v. State](#), 74 S.E. 848;

[Crane v. Campbell](#), 245 U.S. 304.

DISCUSSION:

The sale of alcoholic beverages and liquor is generally prohibited in South Carolina, unless it is undertaken by persons who are duly licensed pursuant to the provisions of §§ 4–1, *et seq.*, Code of Laws of South Carolina, 1962, as amended, and unless the sale is in accord with the prescriptions imposed by §§ 4–1, *et seq.*, Sections 4–29.10 and 4–91, Code of Laws of South Carolina, 1962, as amended. In addition, it is unlawful for any person to sell beer or wine unless such person is duly licensed for that purpose. Section 4–211, Code of Laws of South Carolina, 1962, as amended.

It is generally recognized that laws restricting or prohibiting the sales of intoxicating liquors are applicable to physicians and pharmacists unless exceptions are contained in their favor. 45 Am. Jur.2d *Intoxicating Liquors*, section 262. And, accordingly, a license law applicable to all persons requires a pharmacist to take out a license before he may sell or dispense liquors. 48 CJS *Intoxicating Liquors*, section 126; *State v. Mellor*, 140 Md. 364, 119 A. 875. The reasoning of the South Carolina Supreme Court in *State v. Atkinson*, 22 S.C. 100, 11 S.E. 693, reveals a recognition that a pharmacist falls within the scope of liquor licensing statutes unless exempted by the applicable statutes.

The statutory scheme of liquor regulation in South Carolina is generally inclusive of all persons. See, §§ 4–29.10 and 4–91 of the Code. However, there are certain specified statutory exemptions. Section 4–3 of the Code excludes certain alcohol products from general regulation; included thereunder are:

(2) Patent, propriety, medicinal, and pharmaceutical, antiseptic and toilet preparations; § 4–3 Code of Laws of South Carolina, 1962.

It should be noted, however, that such alcohol products are excluded from the general regulations and licensing statutes only if the alcoholic product is unfit for beverage purposes.

*2 No provision in this chapter (chapter dealing with regulation of alcoholic beverages) shall apply to alcohol intended for use in the manufacture and sale of any of the following when they are unfit for beverage purposes, . . . § 4–3 Code of Laws of South Carolina, 1962. (emphasis added).

In addition § 4–301, *et seq.*, of the 1962 Code provides for the lawful sale of alcohol products by a retail pharmacist. These provisions permit, in prescribed situations, the sale of pure alcohol for medical purposes and grain alcohol for chemists and bacteriologists. Said sections, however, do not allow under any circumstances the sale of alcoholic products to be used as ‘beverages’. Section 4–313, Code of Laws of South Carolina, 1962.

The United States Supreme Court, on occasion, has approved statutory schemes relative to the sale of alcoholic beverages similar to that employed in South Carolina. In *James Edward's Breweries v. Day*, 265 U.S. 254, the Court upheld a State's prohibition on the use of intoxicating liquors for medical purposes. In addition, the Court approved a statutory scheme whereby the dispensing of alcoholic products by a pharmacist was prohibited except in certain prescribed instances. *Lambert v. Yellowly*, 272 U.S. 581.

CONCLUSION:

It, therefore, appears that the South Carolina laws dealing with the sale of alcoholic beverages and beer and wine prohibit a pharmacist from selling or dispensing the same unless the pharmacist is duly licensed as a liquor or beer dealer, regardless of whether or not the selling of the beverages is pursuant to a physician's prescription.

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