

1975 WL 29830 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 23, 1975

You have requested an opinion regarding the lawful operation of a flea market for antique dealers on Sundays.

The operation of a flea market on Sunday would appear to conflict with Section 64-2 of the 1962 Code of Laws of South Carolina, as amended (The Blue Laws). It has been said that Sunday operation is permitted only when (1) the only items sold or offered for sale are specifically permitted by Section 64-2.1 or (2) if not enumerated in Section 64-2.1, the items sold or offered for sale constitute a part of a work of necessity or charity. [State v. Solomon, 245 S.C. 550, 141 S.E.2d 818 \(1965\)](#). Since a flea market is a commercial operation whose items are being sold or offered for sale and which are not specifically exempted by Section 64-2.1 from the application of the Blue Law, the question becomes whether the operation you describe can be considered a part of a work of necessity or charity.

In the present situation as I understand it, certain facilities have been leased by an organization for the purpose of renting booths to individual antique dealers and/or collectors for the display and sale of their articles at a flea market to be held, in part, on a Sunday. The rental proceeds, after expenses, are to be donated to a recognized charity; the sale proceeds will be wholly retained by the individual renters.

‘Charity’ has been defined by the United States Supreme Court as being everything which proceeds from a sense of moral duty or a feeling of kindness and humanity, and is intended wholly for the purpose of the relief or comfort of another and not for one's own benefit or pleasure. [125 U.S. 555, 31 L.Ed. 795, 8 S.Ct. 974](#), as cited in 50 Am. Jur., [Charity](#), § 16. Furthermore, it has been declared by the South Carolina Supreme Court that the donation to charity of the proceeds from prohibited sales does not make the sales themselves matters of charity within the exceptions. [Oliveros v. Henderson, 116 S.C. 77, 106 S.E. 855 \(1920\)](#).

The present situation, in my opinion, would probably not qualify under the preceding construction of the charitable exception to the general prohibition against Sunday operations even if all receipts were donated to a charity. However, a final determination in each case could only be made in a court of law where the burden of proving an exception is placed squarely on the shoulders of the defendant. [State v. Solomon, supra](#). Nevertheless, it appears certain that the situation described is not ‘charitable’ and consequently is not activity which is exempt under the Blue Laws.

Therefore, it is the opinion of this Office that the operation of a flea market on Sunday is illegal.

Very truly yours,

Richard P. Wilson  
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