

1973 WL 27695 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 18, 1973

***1 Re: Definition of Open Container**

Mr. Julian L. Stoudemire
Pettit, Ross and Stoudemire
P. O. Drawer 99
Walhalls, South Caroline 29691

Dear Julian:

In response to your inquiry of April 27, 1973, we thoroughly researched the following sources in an attempt to find an authoritative definition of 'open container': Annual Reports of the Attorney General (1958-to date); office reading files on alcoholic beverages, etc; WEST'S SOUTH CAROLINA DIGEST, Intoxicating Liquors and Words and Phrases; and WEST'S WORDS AND PHRASES. For the most part our efforts were unproductive save one letter written by Alex Mocauly on July 20, 1972. A copy of that letter is enclosed for your consideration.

It would appear that there are no precedents indicating whether or not the breaking of a seal is sufficient to constitute an 'opening' of that container. Under the 'mini-bottle' legislation:

Any person may transport alcoholic liquors to and from any place where alcoholic liquors may be lawfully possessed or consumed; but if the cap or seal on the container has been opened or broken, it shall be unlawful to transport such liquors in any motor vehicle, except in the luggage compartment or cargo area. Section 10(1), Act No. 1063, Acts of 1972.

Arguably, since this statute provides in the alternative for 'opened' or 'broken,' two separate acts are contemplated and an offense is committed either way. Practically speaking, at least as to legal liquor, there can be no 'opening' of a bottle without a brekking of the seal.

Insofar as Section 8-37 of the Municipal Ordinances of the Town of Westminster purports to proscribe any transportation of alcoholic beverages on the public streets, it conflicts with that portion of Section 10(1) cited above which allows transportation between places of lawful possession without regard to the condition of the container. (See letter of July 20, 1972). Section 4-121, South Carolina Code of Laws (1962) provides that the State has expressly occupied the field of regulating alcoholic liquors. As to the attendant limitations upon the powers of municipalities to enact ordinances upon that subject matter, see 1966-67 Ops. Atty. Gen., No. 2282, p. 95. (Copy enclosed). In view of Section 4-121 and the opinion cited, it would appear that the Westminster ordinance is invalid with respect to its attempt to regulate the transportation of alcoholic liquors.

Inasmuch as this is not a formal opinion, I shall not comment upon the beer and wine provisions except to refer you to the discussion of these issues on Page 97 of Opinion No. 2282.

Let me know if this information has been of assistance to you and if a formal opinion will be necessary. I look forward to seeing you in a couple of weeks.

Sincerely,

Dudley Saleeby, Jr.
Assistant Attorney General

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