

STATE OF SOUTH CAROLINA

ADMINISTRATIVE LAW COURT

Piedmont Petroleum Corporation, 1410 )  
Laurens Road, Greenville, S.C. )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

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Piedmont Petroleum Corporation, 2000 )  
Laurens Road, Greenville, S.C., )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

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Piedmont Petroleum Corporation, 433 )  
N. Pleasantburg Drive, Greenville, S.C., )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

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Piedmont Petroleum Corporation, 515 )

**EN BANC ORDER**

Docket No. 03-ALJ-17-0337-CC

Docket No. 03-ALJ-17-0338-CC

Docket No. 03-ALJ-17-0339-CC

Pendleton Street, Greenville, S.C., )  
)  
Petitioner, )  
)  
vs. )  
)  
South Carolina Department of Revenue, )  
)  
Respondent, )  
)  
City of Greenville, South Carolina, )  
)  
Party/Intervenor. )

Docket No. 03-ALJ-17-0340-CC

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Piedmont Petroleum Corporation, 550 Wade )  
Hampton Boulevard, Greenville, S.C. )  
)  
Petitioner, )  
)  
vs. )  
)  
South Carolina Department of Revenue, )  
)  
Respondent, )  
)  
City of Greenville, South Carolina, )  
)  
Party/Intervenor. )

Docket No. 03-ALJ-17-0341-CC

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Publix Super Markets, Inc., d/b/a Publix )  
#874, 215 Pelham Road, Greenville, S.C., )  
)  
Petitioner, )  
)  
vs. )  
)  
South Carolina Department of Revenue, )  
)  
Respondent, )  
)  
City of Greenville, South Carolina, )  
)  
Party/Intervenor. )

Docket No. 03-ALJ-17-0378-CC

Publix Super Markets, Inc., d/b/a Publix )  
#602, 235 S. Pleasantburg, Greenville, S.C., )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

Docket No. 03-ALJ-17-0379-CC

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The Pantry, Inc., d/b/a Pantry #429, 485 )  
Haywood Road, Greenville, S.C., )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

Docket No. 03-ALJ-17-0385-CC

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The Pantry, Inc., d/b/a Depot #3284, 906 )  
Haywood Rd., Greenville, S.C., )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

Docket No. 03-ALJ-17-0386-CC

The Pantry, Inc., d/b/a Pantry #773, 429, )  
Wade Hampton Blvd., Greenville, S.C., )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

Docket No. 03-ALJ-17-0387-CC

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The Pantry, Inc., d/b/a Depot #3282, 820 )  
Church St., Greenville, S.C., )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

Docket No. 03-ALJ-17-0388-CC

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Wal-Mart Stores, East, LP, d/b/a Wal-Mart )  
SuperCenter #641, 6134 White Horse Road, )  
Greenville, S.C., )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

Docket No. 03-ALJ-17-0389-CC

Wal-Mart Stores, East, LP, d/b/a Wal-Mart )  
SuperCenter #640, 1451 Woodruff Road, )  
Greenville, S.C., )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

Docket No. 03-ALJ-17-0390-CC

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Sam's East, Inc., d/b/a Sam's Club #8278, )  
1211 Woodruff Road, Greenville, S.C. )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

Docket No. 03-ALJ-17-0391-CC

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BI-LO, LLC, d/b/a BI-LO #460, 401 Roper )  
Mountain Road, Greenville, S.C., )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

Docket No. 03-ALJ-17-0418-CC

BI-LO, LLC, d/b/a BI-LO #272, 494 S. )  
Pleasantburg Dr., Greenville, S.C., )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

Docket No. 03-ALJ-17-0421-CC

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BI-LO, LLC, d/b/a BI-LO #8, 2111 N. )  
Pleasantburg Dr., Greenville, S.C., )

Petitioner, )

vs. )

South Carolina Department of Revenue, )

Respondent, )

City of Greenville, South Carolina, )

Party/Intervenor. )

Docket No. 03-ALJ-17-0422-CC

**PER CURIAM:** This matter is before the Administrative Law Court (Court)<sup>1</sup> pursuant to a Request for Consideration En Banc filed on September 4, 2003 by the South Carolina Department of Revenue (Department). By Order dated September 18, 2003, the Court granted the request to hear the case en banc pursuant to ALC Rule 70, to determine whether the Department has the authority to issue temporary permits allowing the off-premise sale of beer and wine on Sundays, as authorized by S.C. Code Ann. § 61-4-510 (Supp. 2002) (Seven-Day Permits), in the City of Greenville, South Carolina, and to determine what effect the passage of Act 70 of 2003, effective June 25, 2003, had on the Department’s authority to issue such permits. Following the submission of briefs and stipulations by the parties, the Court held an en banc hearing on February 9, 2004, at which the parties presented oral arguments.

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<sup>1</sup>Act 202 of 2004, effective April 26, 2004, changed the name of the Administrative Law Judge Division to the Administrative Law Court.

## **BACKGROUND AND PROCEDURAL HISTORY**

On June 13, 2000, the City of Greenville (City) conducted a general election. As part of this election, the City also held a referendum on petition pursuant to S.C. Code Ann. § 61-6-2010 (Supp. 1999). The question on the ballot provided:

Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this city for a period not to exceed twenty-four hours to allow the possession, sale and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for sales?

See Stipulation No. 1. On June 15, 2000, the Greenville City Board of Canvassers certified a favorable referendum vote to the Department. No election challenge was filed regarding the form of the ballot or any other aspect of the referendum. See Stipulation No. 2.

On June 20, 2003, the Petitioner Piedmont Petroleum Corporation (Piedmont) filed applications for Seven-Day Permits for five of its convenience stores located within the City of Greenville. Subsequently, the remaining Petitioners, Publix Super Markets, Inc, The Pantry, Inc., BI-LO, Inc., Wal-Mart Stores East LP, and Sam's Club East Inc., all filed applications for Seven-Day Permits for their respective locations within the City of Greenville, on dates ranging from June 23, 2003 (Publix # 602) to July 16, 2003 (Wal-Mart Stores East LP, #641). (See Exhibit 1 to the Stipulations for specific filing dates). All the Petitioners are currently authorized to sell beer and wine for off-premises consumption at their respective locations within the City, with the exception of Sunday off-premises sales. Petitioners' applications were all in compliance with the application requirements of S.C. Code Ann. §§ 61-4-500 and 61-4-520. See Stipulation No. 3.

On July 8, 2003, the City protested the issuance of any Seven-Day Permits, both as to the then existing applicants and as to "any future applications for this Seven-Day Permit." See Stipulation No. 4. On July 9, 2003, the Department denied Piedmont's application for a Seven-Day Permit based upon the City's protest. The Department sent similar denial letters to the other

Petitioners. Thereafter, the Petitioners timely filed requests for contested case hearings. See Stipulation No. 5 and Exhibit 1 to the Stipulations.

On September 4, 2003, the Department filed its Petition for Hearing En Banc in the Piedmont cases. The Petition was granted by Order dated September 18, 2003. See Stipulation No. 7. The other Petitioners each moved to intervene in the en banc hearing, and their respective motions were granted on October 23, 2003. The October 23, 2003 Order also required the City, the sole protestant in these cases, to participate and file a brief within fifteen days of receipt of the Department's brief. See Stipulation Nos. 8 and 9. On October 24, 2003, the City filed a motion to intervene, which was granted by Order dated October 29, 2003.

### **LEGISLATIVE HISTORY**

Prior to 1993, "Sunday sales" of alcoholic beverages were authorized pursuant to S.C. Code Ann. § 61-5-180 (Supp. 1994)(recodified in 1996 as S.C. Code Ann. § 61-6-2010 (Supp. 1997)). This section authorized the Department to issue temporary alcohol permits, valid for a period not to exceed twenty-four hours. These permits further authorized the possession, sale and consumption of "liquor in sealed containers of two ounces or less" only to "bonafide not for profit" entities and businesses which were licensed to sell alcoholic beverages at the time of the application for a temporary permit. The Department was authorized to issue these permits only in counties or municipalities which had held a referendum wherein the majority of the qualified voters, at a general election, had opted for the temporary permits.

By 1993 Act 164, Part II, Section 55, effective June 21, 1993, the General Assembly enacted S.C. Code Ann. § 61-9-312 (Supp. 1994) (recodified in 1996 as S.C. Code Ann. § 61-5-510 (Supp. 1997)). Section 61-9-312(A) specifically provided:

In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180, in lieu of the retail permit fee required pursuant to Section 61-9-310, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-9-90, 61-9-100, 61-9-110, and 61-9-130.

Act 164 also contained specific provisions setting forth the relevant dates for determining what type of referendum was required. Subsection (C), although not codified, provided:

The special version of a retail beer and wine permit provided in Section 61-9-312 of the 1976 Code in subsection A, may be issued in counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180 only after the effective date of this section. In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-5-180 as of



the effective date of this section, county or municipal election commissions shall conduct a referendum upon petition, as provided in section 61-5-180, solely to determine if the special permits authorized in Section 61-9-312 are approved. If approved pursuant to the referendum provided in this subsection or pursuant to Section 61-5-180 after the effective date of this section, the special permits may be issued as provided in Section 61-9-312.

Thus, this statute specifically required counties which had previously had a favorable referendum allowing temporary permits under Section 61-5-80 to hold a new referendum specifically addressing off-premise beer and wine permits.

In 1996, the General Assembly passed and the Governor signed into law Act No. 415 (Act 415), 1996 S.C. Acts and Joint Resolutions. Act 415, which was signed by the Governor on June 4, 1996, recodified many of the statutes relating to alcoholic beverages, including those provisions relating to Seven-Day Permits. Section 61-9-312 was recodified as Section 61-4-510, and Section 61-5-180 was recodified as Section 61-6-2010. Act 415 amended and recodified Section 61-4-510(A) to read:

In counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-6-2010, in lieu of the retail permit fee required pursuant to Section 61-4-500, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-4-120, 61-4-130, and 61-4-140. The annual fee for this special retail permit is one thousand dollars.

Act 415 amended and recodified Section 61-6-2010 to read, in pertinent part:

The department may issue a temporary permit to allow the possession, sale, and consumption of alcoholic liquors in minibottles.

\* \* \* \*

Permits authorized by this section may be issued only in those counties or municipalities where a majority of the qualified electors voting in a referendum vote in favor of the issuance of the permits. The county or municipal election commission, as the case may be, must conduct a referendum upon petition. . . not less than thirty nor more than forty days after receiving the petition . . . The state election laws apply to the referendum, mutatis mutandis. The election commission must publish the results of the referendum and certify them to the South Carolina Department of Revenue. The question on the ballot must read substantially as follows:

“Shall the South Carolina Department of Revenue and Taxation be authorized to issue temporary permits in this (county)(municipality) for a period not to exceed

twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors in minibottles to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for sales?”

(Emphasis added).

Although it was not codified, Section 61-4-510(B) was enacted as part of Act 415. This subsection provided:

(B) The special version of a retail beer and wine permit provided in subsection (A) may be issued in counties or municipalities where temporary permits are authorized to be issued pursuant to Section 61-6-2010 only after June 21, 1993. In counties or municipalities where temporary permits are authorized to be issued pursuant to section 61-6-2010 as of June 21, 1993, county or municipal election commissions must conduct a referendum upon petition, as provided in Section 61-6-2010, solely to determine if the special permits authorized in subsection (A) are approved. If approved pursuant to the referendum provided in this subsection or pursuant to Section 61-6-2010 after June 21, 1993, the special permits may be issued as provided in subsection (A).

Thus, Act 415 specifically provided the effective dates for its provisions and set forth the exact situations under which a new referendum would be required. Act 415 further contained a savings clause in Section 6 which saved all pending proceedings and all rights and liabilities existing at the time the act took effect, and in Section 7, the Act specifically stated: “The provisions of this act apply to licenses, permits and certificates applied for on or after the effective date of this act.”

Act 462 of 1996 was signed by the Governor on July 2, 1996, approximately one month after Act 415. Section 24A of Act 462 further amended Sections 61-9-312 and 61-5-180 but failed to reference the previous recodifications. Act 462 employed substantively identical language to that in Act 415 regarding recodified sections 61-4-510(A) and 61-6-2010. Both Act 415 and Section 24 of Act 462 became effective January 1, 1997. The Code Commissioner addressed this situation as follows:

The 1996 amendment substantially revised [former] Section 61-9-312, recodified by 1996 Act No. 415 Section I as Section 61-4-510, and repealed by Section 5 of the same Act. At the direction of the Code Commissioner, the amendment affected by 1996 Act No. 462 Section 24A to former Section 61-9-312 has been set forth in this section. References to code sections that were repealed by 1996 Act No. 415 Section 5 have been revised to conform with the recodification conversions table appearing in 1996 Act No. 415 Section 8, with one exception. A reference that appeared in subsection (A), following “Sections 61-4-120, 61-4-130, and 61-4-140,” to Section “61-9-130,” which was repealed by 1996 Act No. 415 Section 5 and was not set forth in the conversion table of that Act, was deleted.

S.C. Code Ann. § 61-4-510 (Supp. 2002).

Finally, by Act 70 of 2003, effective June 25, 2003, the General Assembly again amended Sections 61-4-510 and 61-6-2010. The amendments added the requirement that Seven-Day Permits may only be issued in counties or municipalities which have held referendums specifically authorizing off-premises beer and wine consumption permits, and revised the questions to be posed on the referendum ballot. Subsection 5 of Act 70 amended § 61-4-510(A) to read:

(A) In counties or municipalities where off-premises beer and wine permits are specifically authorized to be issued pursuant to Section 61-6-2010, in lieu of the retail permit fee required pursuant to Section 61-4-500, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-4-120, 61-4-130, and 61-4-140. . . .

(Emphasis added). Furthermore, Section 61-6-2010(C)(1) was amended to revise the referendum requirements for temporary and Seven-Day Permits and now reads in pertinent part:

Permits authorized by this section may be issued only in those counties or municipalities where a majority of the qualified electors voting in a referendum vote in favor of the issuance of the permits. . . . The referendum must be conducted at the next general election. . . . The state election laws shall apply to the referendum, mutatis mutandis. The election commission shall publish the results of the referendum and certify them to the South Carolina Department of Revenue. The question on the ballot shall be one of the following:

‘Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for consumption on-premises sales?’ or

‘Shall the South Carolina Department of Revenue be authorized to issue temporary permits in this (county) (municipality) for a period not to exceed twenty-four hours to allow the possession, sale, and consumption of alcoholic liquors in sealed containers of two ounces or less to bona fide nonprofit organizations and business establishments authorized to be licensed for consumption-on-premises sales and to allow the sale of beer and wine at permitted off-premises locations without regard to the days or hours of sales?’

S.C. Code Ann. § 61-6-2010 (Supp. 2003).

## DEPARTMENT'S LICENSING PROCEDURES

Prior to the amendment of S.C. Code Ann. § 61-4-510 by Act 415 of 1996, the Department's practice was to issue Seven-Day Permits only in counties or municipalities which had submitted certified results of referendums addressing both the questions of temporary permits for liquor sales and permits for off-premise beer and wine sales. See Stipulation No. 11. Following the City of Summerville's referendum on May 14, 2003, held pursuant to S.C. Code Ann. § 61-6-2010 (Supp. 2002), businesses within the City of Summerville sought Seven-Day Permits. At first the Department sought to deny these permits because the Summerville referendum did not contain specific language concerning off-premises beer and wine permits. However, the Department subsequently determined, based upon the language of Act 415, Section 1, that a separate referendum for off-premises beer and wine permits was not required. See Stipulation No. 12. Currently, the Department issues Seven-Day Permits in four counties and ten municipalities. See Exhibit 2 to the Stipulations for dates of referendums.

## ISSUES

The following issues were presented for determination:

- (1) Does the Department have the authority to issue off-premises beer and wine permits pursuant to S.C. Code Ann. §§ 61-4-510 and 61-6-2010 (Supp. 2002)?
- (2) What is the effect of Act 70 of 2003, effective June 25, 2003, on the Department's authority to issue Seven-Day Permits?

## DISCUSSION

### **Department's Authority to Issue Seven-Day Permits**

The Department, like any other state agency, is a creature of statute and, as such, can only exercise that authority expressly delegated to it or delegated by necessary implication. Fowler v. Beasley, 322 S.C. 463, 472 S.E.2d 360 (1996). The cardinal rule of statutory construction is to ascertain the legislative intent, which, once determined, must prevail. Gardner v. Biggart, 208 S.C. 331, 417 S.E.2d 858 (1992). In determining the legislative intent of a statute, courts look to the clear and unambiguous language of the statute. Defender Properties, Inc. v. Doby, 307 S.C. 336, 415 S.E.2d 383 (1992). When the terms of a statute are clear and unambiguous, there is no room for construction and courts must apply them according to their literal meaning. Citizens for Lee County, Inc. v. Lee County, 308 S.C. 23, 416 S.E.2d 641 (1992).

Prior to the enactment of Act 70 of 2003, the clear and unambiguous language of § 61-4-510(A)(Supp. 2002) authorized DOR to issue Seven-Day Permits in any county or municipality "where temporary permits are authorized to be issued pursuant to S.C. Code Ann. § 61-6-2010. . . after June 21, 1993." In other words, if a county held a successful referendum on temporary

permits pursuant to Section 61-6-2010 after June 21, 1993, that referendum automatically authorized the issuance of Seven-Day Permits as well. For a temporary permit to be authorized pursuant to S.C. Code Ann. § 61-6-2010 (Supp. 2002), the following requirements had to be met:

- (1) a majority of the municipality's or county's qualified electors had to vote in favor of the issuance of temporary permits;
- (2) the ballot language had to read "substantially" as provided in Section 61-6-2010(C)(1)(Supp. 2002); and
- (3) the Canvassers must publish the results of the referendum and certify them to the Department.

S.C. Code Ann. § 61-6-2010(C)(1)(Supp. 2002). Here, a majority of the Greenville electors voted in favor of the issuance of temporary permits on June 13, 2000, well after June 21, 1993. The ballot language was identical to that set forth in Section 61-6-2010(C), and the Canvassers published the results and certified them to the Department. See Stipulation No. 1.

The City in its protest contends that its referendum held June 13, 2000 did not confer upon the Department the authority to issue Seven-Day Permits because the referendum addressed only the question of temporary minibottle permits and did not specifically address off-premise sales of beer and wine. Prior to the enactment of Act 70, however, the statute simply did not require a separate referendum or specific language addressing the sale of beer and wine for off-premises consumption in counties or municipalities which conducted a referendum on temporary permits after June 21, 1993. Thus, Greenville's referendum, which authorized temporary permits and which was held after June 21, 1993, authorized the Department to issue Seven-Day Permits, notwithstanding the absence of specific language to that effect.<sup>2</sup>

The City further argues that the June 13, 2000 referendum did not give sufficient notice to the electors that a vote in favor of temporary permits was tantamount to a vote for Seven-Day Permits. This argument is without merit. S.C. Code Ann. § 61-6-2010 provides that the state election laws shall apply to any referendum conducted pursuant to that section. Thus, S.C. Code Ann. § 7-17-30 (Supp. 1999) governed the time in which any challenge to the referendum had to be raised. That section provides that any protest or contest to an election must be filed by noon Wednesday following the day of the declaration by the board of canvassers of the result of the election. In this case, the results of the Greenville referendum were not challenged or contested within the statutory time limit. Moreover, the Administrative Law Court is not the appropriate

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<sup>2</sup> See the informal opinion of the South Carolina Attorney General dated April 18, 2001, 2001 WL 564584 (S.C.A.G.), which stated that Seven-Day Permits could be issued in counties or municipalities which had held a successful referendum, pursuant to the then existing version of S.C. Code Ann. § 61-6-2010, after June 21, 1993.

forum to hear election protests. See S.C. Code Ann. §§ 7-17-30, 7-17-50 through 7-17-70, and 7-17-250 (1976 & Supp. 1999)(county boards of canvassers hear contests or protests involving elections, and appeals are taken to the Board of State Canvassers and ultimately to the South Carolina Supreme Court). Accordingly, this is neither the proper time nor the proper forum for the City to complain of the wording of the June 13, 2000 referendum.

### **Effect of Act 70 on the Department's Authority to Issue Seven-Day Permits**

Based on the statutes in effect at the time of the City's June 13, 2000 referendum, the City's referendum authorizing the issuance of temporary permits for Sunday minibottle sales also, as a matter of law, authorized the issuance of Seven-Day Permits. Therefore, the remaining question for determination is whether Act 70 of 2003, effective June 25, 2003, alters the Department's authority to issue Seven-Day Permits in the City of Greenville. We conclude that Act 70 does limit the Department's authority.

Act 70 amends Section 61-4-510(A) to read as follows:

In counties or municipalities where off-premises beer and wine permits are specifically authorized to be issued pursuant to Section 61-6-2010, in lieu of the retail permit fee required pursuant to Section 61-4-500, a retail dealer otherwise eligible for the retail permit under that section may elect to apply for a special version of that permit which allows sales for off-premises consumption without regard to the restrictions on the days or hours of sales provided in Sections 61-4-120, 61-4-130, and 61-4-140.

S.C. Code Ann. § 61-4-510(A)(Supp. 2003)(emphasis added).

Under Act 70 of 2003, the Department no longer acts on an application for a Seven-Day Permit by determining whether a favorable referendum on minibottles has been obtained in the applicant's county or municipality. Rather, effective June 25, 2003, the General Assembly redirected the Department's focus to a determination of whether the applicant's location is within a county or municipality "where off-premises beer and wine permits are specifically authorized to be issued pursuant to Section 61-6-2010."

Here, all of the applications for Seven-Day Permits are for locations within the City of Greenville. Thus, the Department's authority to issue Seven-Day Permits to these applicants is dependent upon the language of the City's June 13, 2000 referendum. Greenville's referendum "specifically authorized" the issuance of temporary minibottle licenses, but did not contain specific language authorizing the issuance of off-premises beer and wine permits. Accordingly, Act 70 terminated the Department's authority to issue Seven-Day Permits to the applicants in the instant case.

The Petitioners and the Department argue that the relevant portions of Act 70 should not apply to a jurisdiction such as the City of Greenville which has already held a minibottle referendum under previously existing law. This argument, however, is unpersuasive for the following reasons.

First, nothing in the literal language of the amended sections suggests any exemptions from the coverage of Act 70. “The cardinal rule of statutory interpretation is that words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation.” Hitachi Data Systems Corp. v. Leatherman, 309 S.C. 174, 420 S.E.2d 843, 846 (1992). Here, the unambiguous language of the statute allows Seven-Day Permits only “[i]n counties or municipalities where off-premises beer and wine permits are specifically authorized to be issued pursuant to Section 61-6-2010.” In the instant case, the City of Greenville has not held a referendum that specifically authorizes the off-premises sale of beer and wine on Sundays.

Second, there is nothing in the General Assembly’s statement of the effective date of Act 70 that allows for any exemptions. Indeed, the General Assembly chose to use the plain and simple statement that “This Act takes effect upon approval by the Governor.” Act 70 of 2003, Section 20. Thus, as of June 25, 2003, the effective date of Act 70, no Seven-Day Permits can be issued in the absence of a referendum that specifically authorizes such permits. Further, a finding that there are no exceptions to Act 70 results in the uniform treatment of all jurisdictions. Seven-Day Permits can be issued only in counties or municipalities which have already had a favorable vote on the beer and wine question, or will obtain such a vote in the future.<sup>3</sup>

The Department and the Petitioners also assert that since Act 70 affects the “rights” of the Department to issue Seven-Day Permits and of the Petitioners to apply for such permits, it cannot be applied to require the City to hold a new referendum before the permits can be issued. This argument is unpersuasive, since it ignores the well-established doctrine that alcoholic beverage licenses or permits create no vested rights. “Liquor licenses are neither contracts nor rights of property. They are mere permits, issued or granted in the exercise of the police power of the state to do what otherwise would be unlawful to do; and to be enjoyed only so long as the restrictions and conditions governing their continuance are complied with.” Feldman v. S.C. Tax Comm’n, 203 S.C. 49, 26 S.E.2d 22 (1943). Moreover, the legislature has the nearly unfettered power and authority, in the exercise of the police power of the State, to change the requirements for the lawful sale and consumption of alcoholic beverages. The case of Davis v. Query, 209

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<sup>3</sup>Our decision finds the Department lacks authority to issue off-premises beer and wine permits for Sunday sales in the City of Greenville since no referendum has specifically authorized such permits. We do not have before us, nor do we have the authority to address, what procedures are required to achieve a favorable referendum.

S.C. 41, 39 S.E.2d 117 (1946) dealt with the South Carolina Tax Commission's authority to promulgate regulations placing limits on a retail liquor dealer's purchases of alcoholic beverages from wholesalers. In upholding the Commission's authority to promulgate such regulations, the South Carolina Supreme Court noted:

[The dealer] overlooks the fundamental fact that he is not engaged in an ordinary business and has no vested right to operate, despite his license, in any manner other than that dictated by the state; his is a perilous business; there is probably no field in which legislative bodies, and the people themselves in referenda, have been more fickle.

*Id.*, 39 S.E.2d at 124 (emphasis added). Because the license is issued pursuant to the police power, the licensee takes it subject to the right of the State, at any time, for the public good, to make further restrictions and regulations. Dantzler v. Callison, 230 S.C. 75, 94 S.E.2d 177 (1956).<sup>4</sup>

Having held that Act 70 of 2003 prohibits the Department from issuing Seven-Day Permits unless the jurisdiction involved has held a favorable referendum specifically approving the off-premises sale of beer and wine on Sundays, the final question this Court must address is whether the applications of Piedmont Petroleum Corp. for its five stores and the application of Publix Super Markets, Inc., d/b/a Publix # 602, should be processed under the old law, since those applications were filed prior to the June 25, 2003 effective date of Act 70. Giving due consideration to all relevant arguments, the applications must be processed under Act 70.

Act 70 amended prior law. Amended statutes must be construed as if the original statutes were repealed and a new and independent act in amended form adopted, unless contrary intent is clearly indicated. Windham v. Pace, 192 S.C. 271, 6 S.E.2d 270 (1939). The repeal of a statute has the effect of blotting out the statute as if it had never existed and puts an end to all proceedings under it which have not been prosecuted to final judgment. Taylor v. Murphy, 293 S.C. 316, 360 S.E.2d 314 (1987). Indeed, unlike Act 415 of 1996, Act 70 contains no savings clause which preserves pending proceedings. Since Piedmont's and Publix's applications were still pending on June 25, 2003, they must proceed under Act 70.

## CONCLUSION

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<sup>4</sup>The issue of the retroactivity of Act 70 must also be addressed. First, the fact that a statute is enacted pursuant to the State's police power does not automatically require retroactive application. S.C. Dept. of Revenue v. Rosemary Coin Machines, Inc., 339 S.C. 25, 528 S.E.2d 416 (2000). Moreover, Act 70 is not being retroactively applied to invalidate any previously existing permit. Rather, as of June 25, 2003, Act 70 controls the issuance of temporary minibottle licenses and Seven-Day Permits.



Prior to June 25, 2003, pursuant to the City's referendum held on June 13, 2000, the Department had the authority to issue Seven-Day Permits within the City of Greenville. However, since the June 13, 2000 referendum did not specifically authorize the off-premises sale of beer and wine on Sundays, effective June 25, 2003, Act 70 of 2003 prohibits the Department from issuing Seven-Day Permits to the Petitioners.

**AND IT IS SO ORDERED.**

**KITTRELL, C.J., ANDERSON, GEATHERS, MATTHEWS and STEVENS, JJ.,  
concur.**

July 20, 2004  
Columbia, South Carolina