

90-00284

OFFICE OF THE
ATTORNEY GENERAL

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STATE OF ALABAMA

APR 24 1990

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Honorable Wayne Brunson
Circuit Clerk
Clarke County Courthouse
P. O. Box 921
Grove Hill, AL 36451

Criminal Law - Affidavits -
Alcoholic Beverages - Alcoholic
Beverage Control Law

Persons charged with possessing
in dry county an amount of
alcoholic beverages in excess
of amount specified in Code of
Alabama 1975, § 28-4-200 should
be charged under § 28-4-201.

Persons transporting five
gallons or more of alcoholic
beverages, the sale, possession
or transportation of which is
prohibited by law, should be
charged with felony under Code
of Alabama 1975, § 28-4-115.

Local district attorney should
be consulted for specific
wording of violations of this
nature.

Dear Mr. Brunson:

This opinion is issued in response to your request for an
opinion from the Attorney General.

QUESTION

Please give me an opinion as to the
defectiveness of the highlighted wording we
use in Clarke County for violation of the
prohibition law.

FACTS AND ANALYSIS

You have attached to your opinion request a copy of an affidavit and warrant form, the highlighted portion of which reads as follows:

"The State of Alabama
"Clarke County

"Before me _____, Clerk-Magistrate of District Court in and for said County, personally appeared _____, who being duly sworn, deposes and says on oath, that in said County, on or about _____ one _____ whose name is otherwise unknown to the affiant, did:

* * *

"Buy, sell, have in possession illegally, give, barter, exchange, receive, deliver, carry or ship prohibited liquors, contrary to law. 28-4-200

"Against the peace and dignity of the State of Alabama. . ."

In a telephone conversation you have informed us that a member of the local district attorney's office told you that the form set forth above is defective.

We have been informed by the District Attorney's Association that their form book does not contain a standard form for charging violations of the statute you inquire about.

We have therefore conferred with the enforcement division of the Alcoholic Beverage Control Board and have been instructed that a person accused of selling or possessing in a dry county an amount of alcoholic beverages in excess of the quantity stipulated in § 28-4-200, but less than five gallons, should be charged under Code of Alabama 1975, § 28-4-201.

If a person transports five gallons or more of alcoholic beverages, the sale, possession or transportation of which is prohibited by law, that person should be charged with a felony under Code of Alabama 1975, § 28-4-115.

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We suggest that you work with your local district attorney and let him or her supply you with the specific language to be used in cases of this nature.

CONCLUSION

Persons charged with possessing in a dry county an amount of alcoholic beverages in excess of the amount specified in Code of Alabama 1975, § 28-4-200 should be charged under § 28-4-201.

Persons transporting five gallons or more of alcoholic beverages, the sale, possession or transportation of which is prohibited by law, should be charged with a felony under Code of Alabama 1975, § 28-4-115.

The local district attorney should be consulted for the specific wording of violations of this nature.

I hope this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By:


JEAN WILLIAMS BROWN
Assistant Attorney General

DS/JWB/jho

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