

2887 Liberty

The State of South Carolina



Office of the Attorney General

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October 23, 1987

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Re: Applicability of Section 44-53-420, CODE OF LAWS (1976), "Attempt and Conspiracy" in Drug Cases to Violent Crime Provisions of Section 16-1-60, CODE OF LAWS (1976).

Dear Mr. Batson:

You have requested an opinion from this office concerning whether offenses sentenced pursuant to Section 44-53-420 are to be classified as "violent" offenses under the provisions of Section 16-1-60. Section 16-1-60 states:

[F]or purposes of definition under South Carolina law, a violent crime includes the offenses of ... drug trafficking as defined in Section 44-53-370(e)

Section 44-53-420 states in its pertinent part:

[A]ny person who attempts or conspires to commit any offense made unlawful by the provisions of this article shall, upon conviction, be fined or imprisoned in the same manner as for the offense planned or attempted; but such fine or imprisonment shall not exceed one-half of the punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy.

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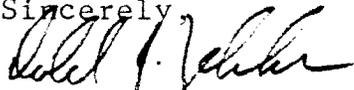
Our office has previously held that the charge should be made specifically under Section 44-53-420 in conjunction with the other drug offense. 1983 OP.ATTY.GEN. No. 83-53, p. 77. Since Section 44-53-420 is a substantive criminal offense, rather than merely a punishment statute, its exclusion from the list of violent offenses precludes convictions for it from being defined a statutory "violent" crime pursuant to Section 16-1-60.

However, Section 44-53-370(e) was significantly amended in 1984 to include the following:

[A]ny person who knowingly sells, manufactures, delivers, or brings into this State, or who provides financial assistance or otherwise aids, abets or conspires to sell, manufacture, or deliver into this State, or who is knowingly in actual or constructive possession of

1984 Act No. 481, Section 1. Therefore, if the person is convicted of the offense of "conspires to sell, manufacture, or deliver into this State" under the "drug trafficking" statute, Section 44-53-370(e), rather than Section 44-53-420, he is guilty of a "violent" offense and should be categorized appropriately. If you have any questions in this matter, please advise me.

Sincerely,



Donald J. Zelenka
Chief Deputy Attorney General

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APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions