



Office of the Attorney General

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October 8, 1986

Ms. Jeanne R. Hertzog
Director of Personnel and Budget
Lexington County Sheriff's Department
P. O. Box 639
Lexington, South Carolina 29072

Dear Ms. Hertzog:

In a letter to this Office you requested an opinion as to whether Section 16-11-620 of the Code, which defines the offense of criminal trespass, may be used by law enforcement personnel or businesses in a shopping mall to prevent individuals from loitering or congregating in the parking area of the mall.

In the opinion of this Office, Section 16-11-620 is applicable to the parking area of a shopping mall. Therefore, such statute may be used in the situation referenced by you assuming all procedural requirements of the statute are met. Such requirements basically involve giving notice to an individual not to enter certain private property or requesting an individual to immediately leave certain property. Of course, such provision may not be utilized in a manner that is discriminatory or violative of any First Amendment rights. With regard to First Amendment considerations, I am enclosing copies of two decisions of the United States Supreme Court, Hudgens v. NLRB, 424 U.S. 507 (1976) and Pruneyard Shopping Center v. Robins, 447 U.S. 74 (1980), along with an A.L.R. annotation, 38 A.L.R. 4th Ed 1219-1226 which discuss such issue.

Ms. Hertzog
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If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Assistant Attorney General

CHR/an

Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions