

1981 WL 158208 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 31, 1981

***1 Re: Opinion Request-Bill H. 2462**

Ms. Inez Moore
Director of Research
Medical, Military, Public and Municipal Affairs Committee
House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Ms. Moore:

In your letter of March 11, 1981, to the Attorney General, you requested an opinion as to whether H. 2462, dated February 19, 1981, would violate any state or federal constitutional provisions, in particular the rights to assemble and bear arms. H. 2462, as presently written, would make the teaching of, or participating in, paramilitary training a criminal offense punishable by imprisonment and/or a fine. Though my research disclosed no case decisions in South Carolina which directly addressed the constitutionality of prohibiting paramilitary training, general authority does support the constitutionality of such legislation as a valid exercise of the State's police power.

A good analysis of the general rule is contained in American Jurisprudence:

A statute prohibiting any body of men, other than the regular organized militia and the regular troops of the United States, to associate themselves together as a military company or organization, to drill or parade with arms without a proper license, is not violative of the federal constitutional provision that . . . the right of the people to keep and bear arms shall not be infringed. . . . Nor is such a statute in contravention of the provision of a state constitution that the people have the right to keep and bear arms for the common defense, since the right does not include the right to associate together as a military organization, or to drill and parade with arms in cities and towns, unless authorized so to do by law. 53 Am.Jur.2d, Military and Civil Defense, § 46 (1962). Several cases have also addressed the question of the regulation of drilling and parading of private groups and have consistently found state regulation of these activities to be a valid exercise of its police powers. See, e.g., Presser v. Illinois, 116 U.S. 252, 6 S.Ct. 580, 29 L.Ed. 615 (1886); Commonwealth v. Murphy, 166 Mass. 171, 44 N.E. 138 (1896). In Presser, the United State Supreme Court held that:

It cannot be successfully questioned that the State Governments, unless restrained by their own constitutions, have the power to regulate or prohibit associations and meetings of the people, except in the case of peaceable assemblies . . . and have also the power to control and regulate the organization, drilling, and parading of military bodies and associations, except when such bodies or associations are authorized by the militia laws of the United States. The exercise of this power by the States is necessary to the public peace, safety and good order. To deny the power would be to deny the right of the State to disperse assemblages organized for sedition and treason, and the right to suppress arm mobs bent on riot and rapine. Id. at 267-8, 29 L.Ed. 619-20.

***2** Since I am aware of no federal law authorizing 'paramilitary training', it seems clear that South Carolina, under its police powers, can restrict such training as provided in H. 2462. Therefore, it is our opinion that the proposed Act, H. 2462, would not violate either federal or state constitutional provisions with regard to the right to assemble and bear arms.

If I can be of further assistance to you in this matter, please do not hesitate to contact me.

Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

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