

1979 S.C. Op. Atty. Gen. 22 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-12, 1979 WL 29018

Office of the Attorney General

State of South Carolina

Opinion No. 79-12

January 25, 1979

*1 **TO: James B. Ellisor**

SUBJECT: Disqualification of Electors.

1. A conviction of criminal sexual conduct in any degree constitutes the offense of rape where the facts on which the conviction was based are sufficient to support a conviction under the previous statutory or common law offense of rape.
2. A conviction of criminal sexual conduct, without a statement of the facts upon which a determination can be made that the facts are sufficient to support a conviction for one of the statutory or common law crimes enumerated in Section 7-5-120, does not disqualify an elector from registering or voting.

Executive Director
Election Commission

QUESTIONS:

1. Does a conviction of criminal sexual conduct in any degree constitute the offense of rape?
2. Does a conviction of criminal sexual conduct in any degree disqualify a person as an elector in South Carolina?

STATUTES AND CASES:

[Sections 7-5-120, 16-3-651 of South Carolina Code of Laws, 1976](#), as amended; Sections 16-71, 16-72, 16-80 of South Carolina Code of Laws, 1962, as amended; [Moorer v. MacDougall, 245 S.C. 633, 142 S.E.2d 46 \(1965\)](#).

DISCUSSION:

1. [Section 7-5-120 of the South Carolina Code of Laws, 1976](#), reads in pertinent part as follows:
Persons convicted of . . . fornication, sodomy, incest, assault with intent to ravish . . . rape . . . shall be disqualified from being registered or voting, unless such disqualification shall have been removed by pardon.

Rape, as defined at common law and under the statutory provisions in existence when [Section 7-5-120](#) was enacted, is ‘the carnal knowledge of a woman by force and against her consent.’ Sections 16-71, 16-72, 16-80, South Carolina Code of Laws, 1962, as amended; [Moorer v. MacDougall, 245 S.C. 633, 142 S.E.2d 46 \(1965\)](#). The essential elements of the crime are sexual intercourse by a man of a woman by force and without consent. The Legislature clearly intended to include within the bounds of the Criminal Sexual Conduct Act the offense of rape, and is evidenced by the explicit repeal of the existing rape statutes. The Act, however, is not limited to the offense of rape.

Under the Act a person is guilty of criminal sexual conduct when one commits a sexual battery on another. The degree of the conduct is determined not by the act but by the degree of force and aggravating circumstances involved. Sexual battery is defined under [Section 16-3-651\(h\), South Carolina Code of Laws 1976](#), as amended, as follows:

. . . sexual intercourse, cunnilingus, fellatio, anal intercourse, or any intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body . . .

Only where the sexual battery contains the basic elements of the previously existing statutory or common law offense of rape (i.e., sexual intercourse by a man of a woman by force and without consent) does the conviction constitute the offense of rape.

*2 2. [Section 7-5-120](#) provides for the automatic disqualification of an elector from registering or voting when convicted of certain enumerated crimes. As previously stated, a conviction for criminal sexual conduct will not in every case constitute the offense of rape. To disqualify a person on the basis of a conviction of criminal sexual conduct without further facts could lead to an improper disqualification. In order to disqualify a person under the crime of rape, the facts under which he was convicted of criminal sexual conduct in any degree must be sufficient to constitute the old statutory or common law crime of rape. However, the person convicted of criminal sexual conduct in any degree may be disqualified from registering or voting if under the facts of his conviction he is guilty of any of the other statutory or common law sexual offenses enumerated in [Section 7-5-120](#).¹

CONCLUSION:

1. A conviction of criminal sexual conduct in any degree may constitute the offense of rape where the facts on which the conviction was based are sufficient to support a conviction under the previous statutory or common law crime of rape.
2. An elector cannot legally be disqualified from registering or voting on the basis of a conviction of criminal sexual conduct in any degree without a determination that the facts on which he was convicted were sufficient to support a conviction on one of the crimes enumerated under [Section 7-5-120](#). The determination should be made based on the common law or statutory offense as it existed at the time of the enactment of [Section 7-5-120](#).

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Staff Attorney

Footnotes

- 1 In passing the comprehensive Criminal Sexual Conduct Act, the Legislature recognized the seriousness of all sexual batteries committed on all persons, not just rape. Therefore, it is reasonable to assume that the commission of any sexual battery regardless of whether it comes within the meaning of rape should justify disqualification of an elector under [Section 7-5-120](#). Nevertheless, legislation will be necessary to obtain that result.

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