

1980 WL 121111 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 21, 1980

*1 Mr. James B. Ellisor
Executive Director
State Election Commission
2221 Devine Street—Suite 105
Post Office Box 5987
Columbia, South Carolina 29250

Dear Mr. Ellisor:

You have asked the opinion of this Office on whether a conviction for the criminal offense of shoplifting set forth in [§ 16-13-110, Code of Laws of South Carolina](#), 1976, as amended by Act No. 507 of the 1978 Acts and Joint Resolutions, would disqualify the person so convicted from registering to vote or voting.

In 1967 this Office issued an opinion advising that a conviction for the offense of shoplifting as defined in § 16-359.1 of the 1962 Code would render the person so convicted disqualified pursuant to [Article II, § 6 of the South Carolina Constitution of 1895](#). This constitutional provision contained language identical to § 23-62(5)(c) of the 1962 Code. The opinion reasoned that although shoplifting was not specifically included in the list of criminal offenses in [Article II, § 6](#), the proof of the elements necessary to convict under § 16-359.1 were identical to those required for a conviction of common law larceny, an offense which was listed in the constitutional provision. The opinion concluded that shoplifting as defined by § 16-359.1 was nothing more than a type of larceny for which there was a different penalty.

[Article II, § 6 of the Constitution of 1895](#) was rewritten and adopted in 1971 as [Article II, § 7](#). See Act No. 277, 1977 Acts and Joint Resolutions. Instead of containing a list of disqualifying crimes, the rewritten constitutional section provides that the General Assembly shall establish disqualifications for convictions of ‘serious crimes.’ However, the list set forth in former Article II, § 6 was retained with slight modification in [§ 7-5-120\(b\)\(5\) of the 1976 Code](#), as amended. Thus, the question remains whether the offense of shoplifting is merely a form of larceny.

A comparison of former § 16-359.1 with the present [§ 16-13-110](#), as amended, reveals that the latter embodies substantial changes enlarging and redefining the offense of shoplifting. See title to Act 507. Although the enlarged and redefined offense of shoplifting has some similarities with common law larceny, it cannot be said that it is merely a type of larceny. Instead, the distinct and separate statutory offense of shoplifting has been established by the amendments. For example, see [§ 16-13-110\(A\)\(2\)](#), and compare [State v. Tindall](#), 213 S.C. 484(19); [State v. Posey](#), 88 S.C. 313 (1910); 52A C.J.S., Larceny, §§ 1, et seq. The factors supporting the conclusion reached by Mr. Coleman thus have been removed by Act 507. Furthermore, it does not appear that the offense of shoplifting is merely a form of or requires elements of proof identical to any of the other disqualifying offenses listed in [§ 7-5-120\(b\)\(5\)](#).

Based on the foregoing, it is the opinion of this Office that a person convicted of the offense of shoplifting defined in [§ 16-13-110](#), as amended by Act No. 507 of the Acts and Joint Resolutions of 1978,¹ should not be disqualified from voting or registering to vote. However, persons convicted for the statutory offense of shoplifting prior to the aforementioned amendment would be subject to the conclusion stated in Mr. Coleman’s 1967 opinion.

Sincerely,

*2 James M. Holly

State Attorney

Footnotes

1 This Act became effective on May 30, 1978.

1980 WL 121111 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.