

1980 WL 121177 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 18, 1980

*1 Mr. Paul Jerald Ward
University Legal Counsel
University of South Carolina
Columbia, SC 29208

Dear Mr. Ward:

You have requested the opinion of this Office concerning the legality, with respect to State and local law, of the presentation of a film on the Columbia campus of the University of South Carolina. It is my understanding that these films are selected by a Cinema Arts Committee which is composed primarily of students. These films are shown on campus at the University Union where there is generally a nominal admission charge. Your concern stems from the fact that a particular film selected might be found to be 'obscene' and, therefore, prohibited for public showing under our law. [Section 16-15-260, Code of Laws of South Carolina, 1976](#), defines the meaning of 'obscene' or 'obscenity' with respect to conduct occurring within this State. The procedure whereby such a determination is made judicially is found in [Section 16-15-270 of the Code](#). The statutory provision directly applicable to University authorities would be [Section 16-15-310 of the Code](#) which states in part:

No person shall intentionally disseminate in any public place any motion picture which he knows or reasonably should know to be obscene within the meaning of [Section 16-15-260](#) . . . nor shall any person intentionally permit any exhibition or show which he knows or reasonably should know to be obscene within the meaning of [Section 16-15-260](#); to be conducted in any public place owned or controlled by him. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided in Section 16-15-440. (Emphasis added)

There is nothing in the law of this State which would indicate prima facie what is or is not prohibited. The only provision relating to films which are popularly classified as 'X' rated is Section 12-21-2710 which provides that a license tax of twenty percent on admissions shall be charged on all movies rated 'X' by the Motion Picture Association of America and all movies which are not rated by that Association or its successor. So long as the tax is paid, there is nothing, therefore, to prohibit the showing of any particular film.

The determination of whether or not an attempt would be made to initiate an obscenity prosecution is a matter for the discretion of the local authorities including the Solicitor. Pursuant to [Section 16-15-270\(c\)](#) any law enforcement officer who has reasonable cause to believe that a person is engaged in displaying or disseminating obscene motion pictures may notify the solicitor of a judicial circuit where the material is offered and the solicitor after investigation determines whether or not to seek warrants seizing the material involved.

There is, of course, nothing which would require the University to permit use of its facility for the showing of any particular film or class of films. It would be within the authority of the University administration to prohibit the use of its facilities for the presentation of a particular class of films such as 'X' rated or unrated.

*2 The decision on what will be permitted to be presented in University facilities is an extremely difficult one. You may wish to review the provisions of [Section 16-15-280 of the 1976 Code of Laws](#). That section discusses matters which might be submitted into evidence during the course of any prosecution for an offense involving the dissemination of obscenity. The considerations which are outlined in that section would appear to have particular significance and applicability to the University setting. Nevertheless, the statute merely outlines considerations which the local authorities would very likely take into account

in determining whether to initiate prosecution. They do not provide any bar to prosecution. Certainly this Office could not recommend University officials in control of the premises approve the showing of 'X' rated or unrated films, as these officials might be subject to prosecution under [Section 16-15-310](#), as well as the student group or committee showing the film.

In summary, you have mentioned a particular film; but our opinion is that the question applies to any film of questionable nature. We are unaware of any legal prohibition which would prima facie preclude showing any film in University facilities. If, however, a case is initiated under the statutory law of this State, it is possible that a jury may find the material to be obscene. Therefore, because an 'X' rating or no rating is a form of prior notice that the film may be considered obscene, that classification could well be used as a guideline. Our advice is that the University should not, absent some extraordinary consideration, approve the showing of such films in its facilities.

Very truly yours,

Daniel R. McLeod
Attorney General

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