

1977 S.C. Op. Atty. Gen. 327 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-401, 1977 WL 24737

Office of the Attorney General

State of South Carolina

Opinion No. 77-401

December 20, 1977

*1 TO: Chief James O. Freeman
Airport Police Department
Columbia Metropolitan Airport

QUESTION PRESENTED:

Is it unlawful for an individual to carry a pistol in a purse unless authorized by statutory provision or State Law Enforcement Division approval?

AUTHORITIES:

Section 16–23–30, Code of Laws of South Carolina, 1976; [State v. Weston](#), 108 S.C. 383, 94 S.E. 871 (1918); [State v. Johnson](#), 16 S.C. 187 (1881); 94 C.J.S., Weapons § 8

DISCUSSION:

You have asked whether it is unlawful for an individual to carry a pistol in a purse. We have determined that in the absence of express statutory authorization or State Law Enforcement Division approval, it is illegal.

The statute currently regulating the carrying of pistols is Section 16–23–20, Code of Laws of South Carolina, 1976. The statute provides:

[i]t shall be unlawful for anyone to carry about the person, whether concealed or not any pistol, except as follows.¹

Since we are here concerned with those circumstances falling without the statutory exceptions and since the statute draws no distinction between concealed and unconcealed pistols, our response is necessarily predicated upon the meaning of the phrase ‘about the person’.

An early predecessor of the present act (becoming effective December 24, 1880) was intended ‘to provide punishment for carrying any deadly weapon concealed about the person.’ 17 Stat. 447. Although the present act represents substantial modification of its predecessor, the legislative objective remains the same. The intent of that early statute has been stated as follows:

‘. . . we think that the purpose was, as far as may be consistent with the right of the citizen to bear arms, absolutely to prohibit the carrying of deadly weapons, with a view to prevent acts of violence and bloodshed, which are apt to be committed by persons under excitement when they have at hand such effectual means of perpetrating such acts.’ [State v. Johnson](#), 16 S.C. 187, 191 (1881).

Clearly, the Legislature continues to protect the policy of inhibiting the occurrence of undue violence. Section 16–23–20 still prohibits the carrying of pistols readily accessible for immediate use. In fact, the present statute enlarges the scope of protection by prohibiting the carrying of any pistol ‘about the person, whether concealed or not’.

As a general rule, the phrase ‘on or about the person’ contained in statutes prohibiting the carrying of weapons means ‘carrying on the person, or in such proximity to the person, as to be convenient of access and within immediate physical reach’. 94 C.J.S., Weapons 38, p. 492. However, note that the language of Section 16–23–20 is ‘about the person’ and not ‘on the person’. The language is not so restrictive that it requires the pistol to be touching the person or in actual physical contact with the person. Despite the fact that penal statutes are to be strictly construed, the phrase ‘about the person’ in Section 16–23–20 cannot be too narrowly construed:

*2 ‘It is every true that the rule is that penal statutes must be construed strictly, but they are not to be so strictly construed as to defeat the obvious intention of the legislature.’ 16 S.C. 187, 189.

If it were the intention of our Legislature to prevent undue violence resulting from the use of pistols close at hand, it would defeat that intention to construe the statute as prohibiting carrying pistols on the person, or while touching the person.

The North Carolina interpretation of the phrase ‘about the person’ is as follows:

The language is not ‘concealed on his person’, but ‘concealed about his person’; that is, concealed near, in close proximity to him and within his convenient control and easy reach, so that he could promptly use it, if prompted to do so by any violent motive. [State v. McManus](#), 89 N.C. 555.

Other jurisdictions refuse to require a showing that the proscribed object touch the person. For example, in [Warren v. State](#), 10 So. 838, 94 Ala. 79, it was held that one who carried a pistol concealed in a satchel supported and carried by a strip over the shoulder was guilty under an act making it unlawful to carry a weapon concealed about the person. A defendant carrying a pistol wrapped in an apron in a knapsack which he carried in his hand or suspended from his shoulder by a strap was held to be guilty of carrying a concealed dangerous weapon on or about his person. [State v. Jones](#), 121 So. 300, 168 La. 55. Articles of personal convenience carried by women in handbags, as men would so carry in their pockets, are carried on or about the person. [Levy Corporation v. U.S.](#), 12 Ct. Cust. App. 181, 182.

Nevertheless, it could be argued that [State v. Weston](#), 108 S.C. 383, 94 S.E. 871, places South Carolina at odds with the line of cases cited above. The court there held that a pistol carried in a satchel or suit case was not carried ‘about the person’ in violation of the then existing statute. However, it is unclear in what manner the suit case was carried; in what proximity to the defendant the suit case was carried or what control the defendant maintained over the suit case.

Needless to say, given the skeletal outline of the facts in [State v. Weston](#), *supra*, it is not difficult to perceive that the defendants’ pistol may not have been readily accessible to him. Since there would have been no danger of his using the pistol while in a state of undue excitement, his conduct would not have fallen within the prohibition of the statute, and his conviction would have been improper.

CONCLUSION:

There can be no question that a pistol carried in a purse is readily accessible for immediate use. Since the pistol would be at hand in a moment of excitement or anger, a pistol carried in a purse would be ‘about the person’ and such conduct is proscribed generally by Section 16–23–20. Any opinion heretofore issued by this office which might be construed as being in conflict with this opinion is hereby rescinded.

*3 Daniel R. McLeod

Attorney General

Footnotes

- 1 The statute provides for twelve specific exceptions to the above-quoted general prohibition. For instance, one of the exceptions provides that law enforcement officers while in the line of duty are exempt from the general prohibition. In addition, exceptions in two instances are subject to SLED approval. Here we address ourselves to those circumstances not falling within these statutory exceptions.

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