



ALAN WILSON
ATTORNEY GENERAL

August 30, 2021

The Hon. Brian Adams
South Carolina Senate
613 Gressette Senate Building
Columbia, SC 29201

The Hon. Sylleste Davis
South Carolina House of Representatives
414-C Blatt Building
Columbia, SC 29201

Dear Senator Adams and Representative Davis:

We received your request seeking an opinion on a question related to possession of a handgun in common areas governed by an HOA. This letter sets out our Office's understanding of your question and our response.

Issue:

We quote here from Sen. Adams request letter for a summary of the issue:

[Senator Adams], along with Representative Sylleste H. Davis, were recently contacted by a constituent within the Del Webb community inside the Canebay neighborhood. The Del Webb community is a gated community and a restricted neighborhood for those over the age of 55 years of age. The constituent along with other members attended a Homeowners Association Board of Directors meeting. At this meeting, the board discussed a motion to amend the Canebay resort and community rules and regulations to prohibit the carrying of a firearm, either concealed or open carry.

The letters also enclosed copies of the current covenants and restrictions, bylaws, and the meeting agenda.

Law/Analysis:

Our Office has opined before on the issue of firearm possession in common areas controlled by an HOA. *Op. S.C. Att'y Gen.*, 2018 WL 3413371 (June 29, 2018). Our research has

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not identified any legal developments which would cause us to revise that prior opinion. Accordingly, much of our discussion here is a restatement of that prior opinion. *See id.*

Section 16-23-20 of the South Carolina Code generally addresses the legality of carrying a handgun in this State and provides in relevant part:

It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law:

...

(8) a person in his home or upon his real property or a person who has the permission of the owner or the person in legal possession or the person in legal control of the home or real property;

S.C. Code Ann. § 16-23-20(8) (2015). This is consistent with the historical practice of the South Carolina Legislature to carefully avoided criminalizing the possession of a handgun on private property by the property owner. *See, e.g., Op. S.C. Att'y Gen.*, 2018 WL 3413370 (June 28, 2018) (discussing 1881-1882 S.C. General Statutes § 2472).

However, this author's research has not identified any reported South Carolina case where a court of our State ruled on the question of whether a person could carry a handgun pursuant to Section 16-23-20(8) where the person had some property interest in the land but did not hold title to the real property or have legal possession and control as a leaseholder. Generally speaking, a court faced with the question presented in your letter would be required to review and interpret the restrictive covenants and bylaws which govern the common areas. Such a court likely would be called upon to determine the nature of the property and possessory interests of all parties, which necessarily would be a fact-specific undertaking. For this reason, it appears that such questions must be decided on a case-by-case basis.

Due to the fact-specific nature of this question, our Office cannot answer it definitively without making findings of fact and any such undertaking would exceed the proper scope of an opinion of this Office. This Office consistently has recognized that, unlike a court, our Office cannot adjudicate factual disputes or make independent findings of fact in an opinion. *See, e.g., Op. S.C. Att'y Gen.*, 2003 WL 21108489 (May 5, 2003) (internal citations omitted). In order to be as responsive as possible to your question, however, we will discuss certain provisions of South Carolina law which appear to be relevant to its resolution.

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Several prior opinions of this Office discuss homeowners' associations and restrictive covenants at length, and we discuss two such recent opinions here. A 2016 opinion of this Office addressed to Rep. Goldfinch discussed the role of restrictive covenants in establishing the rights of homeowners with respect to each other and the homeowners' association. *Op. S.C. Att'y Gen.*, 2016 WL 4419890 (August 5, 2016). Early in 2017 our Office relied on this 2016 opinion to issue another opinion which further discussed the role of homeowners in safeguarding their rights under the restrictive covenants in an HOA. *Op. S.C. Att'y Gen.*, 2017 WL 569543 (January 3, 2017). We quote at length from that opinion here:

Homeowners' associations are uniquely self-policing among nonprofit corporations, and are capable of robust self-government. Membership in the association often is mandatory for members of a community, and the actions of the association directly impact the daily lives of the members and one of their greatest investments: their homes. While a person might leave a voluntary club or choose not to donate to a charity which that person believes is acting contrary to their covenants and bylaws, a homeowner has a strong vested interest in monitoring the actions of their association closely, and to actively push back against any improper action. Where homeowners are elected to the boards of associations through a vote by the members, the homeowners are democratically represented, and they retain the power vote in other board members if their interests are not represented. Furthermore, if the association abuses their power so as to overstep the governing covenants and bylaws, then all members generally have the incentive and the ability to discover those abuses, and may resort to the courts for a remedy if the matter cannot be resolved internally. Finally, if board members or agents of the association engage in fraud or other criminal activity, the local solicitor has the jurisdiction to pursue a prosecution, in his or her discretion.

It appears from our research that most (if not all) reported cases in this State related to the internal conduct of homeowners' associations originally were brought either by one of the homeowners or the association itself.

Id.

Conclusion:

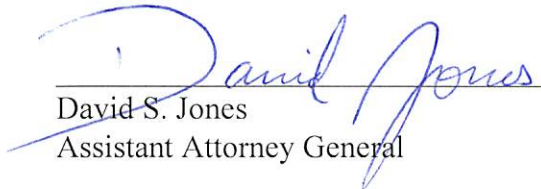
In conclusion, for the reasons set forth above, our Office cannot opine definitively on the specific questions presented in your request letter. We do hope that that statutes and prior

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opinions we discussed in response to those questions are helpful in providing some insight into relevant South Carolina law.

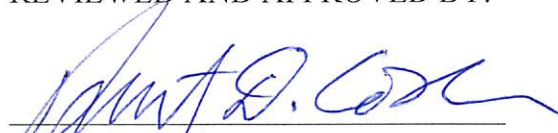
This Office has reiterated in numerous opinions that it strongly supports the Second Amendment and the right of citizens to keep and bear arms. *See, e.g., Op S.C. Att'y Gen., 2015 WL 4596713 (July 20, 2015).*

Sincerely,



David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General