



ALAN WILSON  
ATTORNEY GENERAL

December 16, 2024

Chief Lawrence Wiggins  
Allendale Police Department  
137 Pleasant Street East  
Allendale, SC 29810

Dear Chief Wiggins:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter requests an opinion addressing the following:

I am writing to your office to formally request an opinion on the issue of trespass and burglary in the third degree. Under S.C. Code § 16-11-313 Burglary in the third degree: A person is guilty of burglary in the third degree if “(A) A person is guilty of burglary in the third degree if the person enters a building without consent and with intent to commit a crime therein.” Furthermore, the statutory definition of building in 16-11-310 defines building as “‘Building’ means any structure, vehicle, watercraft, or aircraft.”

Within this statutory framework, I pose the following questions:

1. Does a written trespass warning/notice under S.C. Code § 16-11-620 void the consent needed to lawfully gain access to a “building” under S.C. Code § 16-11-313?
2. Can the repeated acts of trespass after notice under S.C. Code § 16-11-620 and shoplifting under S.C. Code § 16-13-110 at the same establishment, by the same person, rise to burglary in the third degree if the actor’s sole intent, as evidenced by his actions, are to enter the establishment and steal?

#### **Law/Analysis**

It is this Office’s opinion that a written trespass warning issued according to S.C. Code § 16-11-620 does not void the element of burglary in the third degree for “enter[ing] a building without consent” in S.C. Code § 16-11-313, but it may instead be used to demonstrate lack of consent. Section 16-11-620 provides a criminal penalty for

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Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.


(emphasis added). Under the burglary statutes codified in Title 16, Chapter 11, Article 5, “enters a building without consent” is statutorily defined to mean:

- (a) To enter a building without the consent of the person in lawful possession; or
- (b) To enter a building by using deception, artifice, trick, or misrepresentation to gain consent to enter from the person in lawful possession.

S.C. Code § 16-11-310(3). If a person is given a trespass warning prior to his later entry of the noticed premises, the written trespass warning may be used to prove that the person entered the building without consent.

Next, you ask whether repeated acts of trespassing after notice, S.C. Code § 16-11-620, and shoplifting, S.C. Code § 16-13-110, at the same establishment by the same person can support a charge of burglary in the third degree. S.C. Code § 16-11-313. As noted in your letter, burglary in the third degree occurs when a “person enters a building without consent and with intent to commit a crime therein.” *Id.* In the abstract, the combination of the trespass and shoplifting could satisfy both elements of entering a building without consent as well as demonstrating intent to commit a crime therein. However, this Office cannot find facts in an opinion, and we strongly encourage consulting with your circuit solicitor to evaluate what charges may be warranted.

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General