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HENRY MCMASTER
ATTORNEY GENERAL

October 2, 2006

The Honorable Trey Gowdy
Solicitor, Seventh Judicial Circuit
180 Magnolia Street
Spartanburg, South Carolina 29306

Dear Solicitor Gowdy:

In a letter to this office you referenced a situation where an individual lawfully operating a motor vehicle has a large sign in the bed of his truck supporting a particular political candidate. That individual drives the truck with the sign in the back to a public high school football game where he is then asked to leave because of having the sign in the back of his truck. You indicated that it did not appear that the person was asked to leave because of the particular candidate being supported but rather because of the sign itself in the back of the truck. The sign did not appear to pose a safety or security risk to anyone. Other cars with political bumper stickers were allowed to park and the drivers were allowed to attend the game. You have questioned whether such conduct by or on behalf of someone appearing to be an agent of the public school would violate S.C. Code Ann. § 16-17-560. Such provision states that

> [i]t is unlawful for a person to assault or intimidate a citizen, discharge a citizen from employment or occupation, or eject a citizen from a rented house, land, or other property because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State.

The violation of such provision is a criminal misdemeanor subject to a fine of not more than one thousand dollars or imprisonment not more than two years or both.

Based upon my research, I have been unable to find any case law or attorneys general opinions that deal with a factual situation such as that addressed above. The only case law that I have located specifically dealing with the referenced South Carolina provision involved alleged wrongful discharge from employment addressed by such statute. See, e.g., Keiger v. Citgo, Coastal Petroleum, Inc., 326 S.C. 369, 482 S.E.2d 792 (1997).

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There is no question that having a sign in the back of a truck supporting a candidate would qualify as the exercise of political speech protected by the First Amendment. See: Coady v. Steil, 187 F.3d 727 (7th Cir. 1999) (sign advocating a particular individual for the office of mayor atop a car was political speech). In examining the statute as to the situation you addressed, it must be considered whether the act of asking the driver of the truck to leave the parking lot constituted intimidation or the ejectment of a citizen "from a rented house, land, or other property".

As to the latter dealing with ejectment of a citizen, in the context of the situation addressed by your letter, the use of the term "property" would appear to be at issue. Generally, resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Moreover, criminal statutes must be strictly and narrowly construed in favor of a defendant and against the State. State v. Prince, 335 S.C. 466, 517 S.E.2d 229 (Ct. App. 1999). Recognizing such, in the opinion of this office, the term "rented" modifies not only the terms "house" and "land" but also "other property". It appears that the purpose of the statutory prohibition is to prevent obstacles to the free exercise of political will merely because the individual expressing a political opinion resides on or is associated with rental property. As a result, the prohibition dealing with the ejectment of a citizen in such circumstances would not appear to be applicable to the situation you addressed at the parking lot of a public high school football game.

The only other possible consideration is the prohibition making it unlawful to "intimidate a citizen" because of the exercise of guaranteed political rights and privileges. As stated in Colson v. Grohman, 174 F.3d 498, 506 (5th Cir. 1999), "[t]here is no question that political expression...is protected speech under the First Amendment." See also Connick v. Myers, 461 U.S. 138, 145, 103 S.Ct. 1684, 75 L.Ed.2d 708 (1983) ("[T]he Court has frequently reaffirmed that speech on public issues occupies the highest rung of the heirarchy [sic] of First Amendment values and is entitled to special protection."); Bart v. Telford, 677 F.2d 622, 625 (7th Cir. 1982) ("A public endorsement of a candidate for public office is an expression of views protected by the First Amendment). I have been unable to find any case law or attorneys general opinions that indicate that circumstances such as you described in your letter dealing with asking a person to leave certain premises because of the presence of a sign constitutes intimidation of the exercise of political rights and privileges.

Then, the question would be whether the "intimidation" was because of political views or because of a content neutral sign policy? You indicate that the removal was due not to content of the sign but the existence of a sign. The question would then be factual in nature. Did the school have a policy regarding removal of signs? Were other signs allowed? Was a public forum existent? Stewart v. District of Cola. Armory Brd., 863 F.2d 1013 (D.C. Cir. 1988). A public entity can regulate the time, place, and manner of speech. If the school had a policy prohibiting all signs, such would be valid. If, however, there was discrimination due to content of speech, this would not be the case. A review of such questions would be necessary in determining whether there was a violation of Section 16-17-560 in this instance.

If there is anything further, please advise.

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General