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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

March 24, 2003

The Honorable B. Lee Miller  
Municipal Court Judge  
City of Greenwood  
520 Monument Street  
Post Office Box 40  
Greenwood, South Carolina 29648-0040

**Re: Citizen's Arrest for Shoplifting**

Dear Judge Miller:

You have requested an opinion of this office concerning whether a citizen, employed in a business in any capacity other than a security guard, can make a citizen's arrest for shoplifting when: (1) the employee actually sees a person take possession of an item and walk out of the store; (2) an alarm has sounded and a person is detained; (3) the employee sees a person hide the merchandise on his person but has not left the store; (4) the employee sees a person change the price tag on a piece of merchandise.

**Law/Analysis**

In State v. McAteer, 340 S.C. 644, 532 S.E.2d 865 (2000), the South Carolina Supreme Court considered the scope of the State's laws with regard to a citizen's arrest. The Court held that "there is no common law right to make warrantless citizen's arrests of any kind and that such rights as exist are created by statute in South Carolina." The Court in McAteer noted that the provisions allowing for citizen's arrests are found in S.C. Code Ann. §17-13-10 and §17-13-20. Section 17-13-10 provides that a person may arrest a felon or thief as follows:

Upon (a) view of a felony committed, (b) certain information that a felony has been committed or (c) view of a larceny committed, any person may arrest the felon or thief and take him to a judge or magistrate, to be dealt with according to law.

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Additionally, S.C. Code Ann. §17-13-20 provides the following:

A citizen may arrest a person in the night time by efficient means as the darkness and the probability of escape render necessary, even if the life of the person should be taken, when the person: (a) has committed a felony; (b) has entered a dwelling house without express or implied permission; (c) has broken or is breaking into an outhouse with a view to plunder; (d) has in his possession stolen property; or (e) being under circumstances with raise just suspicion of his design to steal or to commit some felony, flees when he is hailed.

Therefore, private citizens have the power to arrest anywhere in the State for any crime covered by either §17-13-10 or §17-13-20. Both statutes provide that a person can make a citizen's arrest when he has witnessed a larceny.

Section 16-13-10 of the South Carolina Code of laws provides that a person is guilty of shoplifting if he:

- (1) takes possession of, carries away, transfers . . . from one area of a . . . retail mercantile establishment to another area, or causes to be carried away or transferred any merchandise displayed, held, stored, or offered for sale by any . . . retail mercantile establishment with the intention of depriving the merchant of the possession, use, or benefit of the merchandise without paying the full retail value;
- (2) alters, transfers, or removes any label, price tag marking, indicia of value, or any other markings which aid in determining value affixed to any merchandise . . .;
- (3) transfers any merchandise displayed, held, stored, or offered for sale by any store or other retail mercantile establishment from the container in which it is displayed to any other container with intent to deprive the merchant of the full retail value.

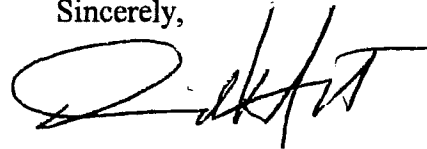
In 1967, this Office concluded that shoplifting as defined by statute is nothing more than a type of larceny for which there is a different penalty. Op. Atty. Gen. dated September 18, 1967. While the shoplifting statute has been amended since the 1967 opinion was rendered, current law supports the conclusion equating shoplifting with a type of larceny. Larceny is the felonious taking and carrying away of the goods of another against the owner's will or without his consent. See Broom v. State, 351 S.C. 219, 569 S.E.2d 336 (2002); State v. Condrey, 349 S.C. 184, 562 S.E.2d 320

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(Ct.App.2002).<sup>1</sup> Further, “[l]arceny is ... implicit within the crime of shoplifting.” State v. Al Amin, \_\_\_ S.C. \_\_\_, \_\_\_ S.E.2d \_\_\_ 2003 WL 687572 (S.C.App. 2003).<sup>2</sup> Therefore, if a merchant has reasonable cause to believe that a shoplifting incident has taken place, the merchant can make a citizen’s arrest.

Furthermore, §16-13-140 provides a defense to an action for a delay by a merchant or his employee or agent to investigate a possible theft from his establishment. If “the person was delayed in a reasonable manner for a reasonable time to permit such investigation, and reasonable cause existed to believe that the person delayed had committed the crime of shoplifting,” the merchant or employee or agent is not subject to liability for the delay to investigate. S.C. Code Ann. §16-13-140.

Sincerely,



David K. Avant  
Assistant Attorney General

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<sup>1</sup> “Felonious” does not always imply that the act is related to the commission of a felony. Felonious is also understood to mean simply “[p]roceeding from an evil heart or purpose; malicious; villainous.” See Black’s Law Dictionary (7th ed. 1999).

<sup>2</sup> NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.