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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

March 26, 2003

Officer Joe J. Ard
Law Enforcement District VIII
SC Department of Natural Resources
2007 Pisgah Road
Florence, South Carolina 29501

Re: S.C. Code Ann. §50-11-760

Dear Officer Ard:

You have requested an opinion from this Office concerning the application of S.C. Code Ann. §50-11-760. You indicate that the Section "... prohibits 'hunting from a public road or railroad right-of-way if the person does not have permission to hunt the land immediately adjacent to the public road or railroad right-of-way.'" You also indicate that Section 50-11-760 "... goes on to say that hunting includes 'possessing, carrying, or having readily accessible a loaded centerfire rifle or a shotgun loaded with shot size larger than number four.'" By way of background, you state that

> Time and time again law enforcement officers encounter situations where a hunter is parked or standing on a public road where he/she does not have permission to hunt the land adjacent to it and is in possession of an unloaded firearm prohibited by Section 50-11-760. It is unclear whether the aforementioned subject is in violation of the law if they also have readily accessible the proper ammunition to quickly load and fire the device they possess. ...
>
> The overwhelming majority of the cases written by officers of the Department of Natural Resources involve a scenario where a subject is parked on a public roadway engaged in hunting in an area of which they do not have permission to hunt on the land adjacent to the road, and has in his/her vehicle an unloaded firearm prohibited by Section 50-11-760. Under these conditions, can an individual be cited because the ammunition to fit the weapon is either within the vehicle or on his/her person? Also, if these conditions are deemed sufficient to charge the individual based on the fact that the weapon and ammunition are "readily accessible," officers representing our agency need some guidelines established that define the conditions that meet, or fail to meet, the "readily accessible" criteria. This clarification is greatly needed because the majority of the time potential violators will simply remove the ammunition from

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> their weapons after they see the officer arrive but before the officer has an opportunity to approach the vehicle.

Given the cited language of Section 50-11-760 and the background provided, you specifically ask "[i]s it necessary that the potential violator have the firearm loaded in the presence of the officer for them to be charged under this section?"

A review of all of the relevant language of Section 50-11-760 is necessary to appropriately respond to your questions. The Section provides in pertinent part that

> (A) It is unlawful for a person to hunt from a public road or railroad right- of-way if the person does not have permission to hunt the land immediately adjacent to the public road or railroad right-of-way.
> (B) (1) For purposes of this section, "hunting" includes:
> (a) taking deer by occupying stands for that purpose; and
> (b) possessing, carrying, or having readily accessible:
> (i) a loaded centerfire rifle; or
> (ii) a shotgun loaded with shot size larger than number four.
> (2) For purposes of this section, "loaded" means a weapon within which any ammunition is contained. (Emphasis added)
> (3) For purposes of this section, the terms "possessing", "carrying", and "having readily accessible" do not include a centerfire rifle or shotgun which is contained in a:
> (a) closed compartment;
> (b) closed vehicle trunk; or a
> (c) vehicle traveling on a public road.

As you have stated, Section 50-11-760 makes it unlawful to hunt from a public road or railroad right-of-way in certain circumstances. Hunting is defined as, among other things, possessing, carrying or having readily accessible a loaded rifle or shotgun with shot size larger than number four. Of particular relevance to your question is the fact that the General Assembly has chosen to specifically define the term "loaded" as "... a weapon within which any ammunition is contained."

When interpreting a statute which contains a penalty provision, as does Section 50-11-760, a basic principal of statutory construction must be kept in mind. That is, penal statutes are to be strictly construed against the State and in favor of the defendant. State v. Blackmon, 304 S.C. 270, 273, 403 S.E.2d 660, 662 (1991). A strict reading of Section 50-11-760 would indicate that, in order to convict someone of a violation of the statute for simply possessing a weapon on a public road or railroad right-of-way, the weapon would actually have to have ammunition located inside of it in some manner. It does not appear that merely having the ammunition "readily accessible," without more, would constitute a violation. This conclusion, however, does not end our analysis of the questions you have raised.

Nowhere in Section 50-11-760 is there a requirement that, in order to be guilty of a violation, a person hunt or have in his possession a loaded weapon "in the presence" of a law enforcement officer. The general rule regarding the issuance of an arrest warrant based on other than eyewitness testimony from an arresting officer was set out by this Office in a prior opinion where it was stated: "[a]ny citizen [including a law enforcement officer] who has reasonable grounds to believe that the law has been violated has the right to cause the arrest of a person who he honestly and in good faith believes to be the offender ... [citation omitted] ... [t]he probable cause expressed in the affidavit of an arrest warrant may be based on personal knowledge or hearsay ... [citation omitted] ... [t]he affiant to an arrest warrant must be able to satisfy an inquiring magistrate that sufficient facts and information exist to support the warrant which determination is entirely within the magistrate's judgment. The penalty for perjury attaches to the facts alleged in the affidavit." See Op. S.C. Atty. Gen. dated November 4, 1993. Further, all that is necessary to sustain a criminal conviction is "[t]he presentation of any direct or circumstantial evidence reasonably tending to prove the defendant's guilt..." State v. Crane, 296 S.C. 336, 372 S.E.2d 587 (1988). In fact, a criminal conviction may be obtained on the presentation of circumstantial evidence alone, with no direct evidence. See Op. S.C. Atty. Gen. dated October 14, 1980. Such evidence can come from any individual with knowledge.

Accordingly, a charge under Section 50-11-760 can properly be brought based on any evidence that a person is or was improperly hunting from or possessing a loaded weapon on a public road or railroad right-of-way. For example, this evidence can come from the accounts of witnesses other than law enforcement or circumstantial evidence that a person has hunted from or possessed a loaded weapon on a road or right-of-way. There is no requirement that a law enforcement officer actually be in the presence of an offender possessing "... a weapon within which any ammunition is contained." See Op. S.C. Atty. Gen. dated May 22, 2001 (S.C. Code Ann. §16-11-700 can be enforced even if the violation was not directly observed by a law enforcement officer).

Sincerely,

David K. Avant
Assistant Attorney General

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