



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

September 23, 2003

The Honorable Gene Taylor
Sheriff, Anderson County
Post Office Box 5497
Anderson, South Carolina 29623

Dear Sheriff Taylor:

In a letter to this office you raised several questions regarding the offense of "breach of the peace".

The offense of breach of the peace has been defined as "...a violation of public order, a disturbance of public tranquility, by any act or conduct inciting to violence." Thompson v. Ford Motor Credit Co., 324 F. Supp. 108, 115 (D.S.C. 1971). Thompson further defined "peace" as "a state of tranquility...(and)...anything which disturbs that state is a breach of the peace." Id. As indicated in State v. Poinsett, 250 S.C. 293, 297, 157 S.E.2d 570, 571 (1967), the term "breach of the peace"

...is a generic one embracing a great variety of conduct destroying or menacing public order and tranquility. In general terms a breach of peace is a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence, which includes any violation of any law enacted to preserve peace and good order.

You asked whether breach of the peace is a common law offense and questioned whether it has been repealed by the General Assembly. You further questioned whether breach of the peace can be enforced by police officers.

An opinion of this office, 1984 Op. Atty. Gen. No. 84-122, stated that breach of the peace is a common law offense. See also: Poinsett, supra. Such offense still exists at common law although another offense, public disorderly conduct, S.C. Code Ann. Section 16-17-530 (2003), also exists which would cover similar conduct.¹ An opinion of this office dated August 10, 1970

¹The offense of public disorderly conduct is defined as "(a)ny person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or (continued...)

determined that “under the common law, a peace officer was privileged to arrest an individual for a misdemeanor involving a breach of the peace provided the offense was committed in the officer’s presence.” See also: Prosser v. Parsons, 245 S.C. 493, 141 S.E.2d 342 (1965). The supreme court stated in State v. Mims, 263 S.C. 45, 48, 208 S.E.2d 288, 290 (1974) that “(u)nder the common law a conservator of the peace has authority to make an arrest without a warrant for a misdemeanor involving a breach of the peace committed in his presence or within his view.” As stated in S.C. Code Ann. Section 17-13-30 (2003), “(t)he sheriffs and deputy sheriffs of this State may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of the State if such arrest be made at the time of such violation of law or immediately thereafter.” Consistent with such, the offense of breach of the peace can be enforced by law enforcement officers.

You also asked whether the offense of breach of the peace is an offense separate from breach of the peace outlined in S.C. Code Ann. Section 22-5-150 (1989) which authorizes magistrates to arrest “all afayers, rioters, disturbers and breakers of the peace”. As defined above, breach of the peace is a separate common law offense. Section 22-5-150 in authorizing arrests by magistrates of “breakers of the peace” does not establish an offense but authorizes arrests by magistrates of “breakers of the peace”. Such is included in a provision that also authorizes arrests by magistrates of “...all who go armed offensively, to the terror of the people,...(those who)...utter menaces or threatening speeches and ...otherwise dangerous and disorderly persons.

As to the enforcement of breach of the peace, you asked whether an arrest requires a warrant be issued if the crime was freshly committed in an officer’s presence. Generally, an officer may not make an arrest for a misdemeanor without a warrant unless the offense was committed in the officer’s presence. Op. Atty. Gen. dated June 2, 1974. An opinion of this office dated July 19, 1996 determined that “it is fundamental law in South Carolina that, in order to arrest for a misdemeanor not committed in the officer’s presence, either a warrant must be obtained or there must be probable cause that the offense has been freshly committed.” See also: State v. Clark, 277 S.C. 333, 334, 287 S.E.2d 143, 144 (1982) (officer generally has “...the right to make a warrantless arrest for a misdemeanor not committed in his presence, if the facts and circumstances observed by the officer provided probable cause to believe that a crime has been freshly committed.”).

Consistent with the statements above, a law enforcement officer may arrest an individual for a misdemeanor involving a breach of the peace provided the offense was committed in the officer’s

¹(...continued)

otherwise conducting himself in a disorderly or boisterous manner, (b) use obscene or profane language on any highway or at any public place or gathering or in hearing distance of any schoolhouse or church or (c) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, discharge any gun, pistol or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises....”

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presence. However, a warrant should be obtained soon thereafter in order to constitute a charging document for purposes of trial and to put the defendant on notice of the charges against him.

You also questioned whether a person threatening suicide by means of actions, verbal threats, or written threats constitutes a breach of the peace. As referenced in the definition set forth above, breach of the peace includes "a violation of the public order, a disturbance of public tranquility". As such, a person threatening suicide, which would include verbal threats, could constitute a breach of the peace under certain circumstances. Of course, each situation would have to be evaluated independently in making such a determination. A prior opinion of this office dated March 29, 1995, a copy of which is enclosed, dealt with the authority of a law enforcement officer to restrain or detain combative mental patients where there has been no court order of detention or arrest. That opinion commented that "...it is settled that a mentally ill person who is committing a breach of the peace may be arrested without process under the same circumstances as one who is not mentally ill, such cases 'being governed by the principles which apply to cases of arrest on probable cause without process....'"

In your last question you asked whether the offense of breach of the peace is limited with respect to public places or private property. A prior opinion of this office dated October 25, 1967

...it is generally accepted that a breach of the peace...may occur in a privately-owned place, such as a home or hotel-motel room, as well as in any public place...The rationale of these decisions is that disturbance of the peace of other persons, or undue interference with the tranquility which they have a right to enjoy, is prohibited by the common law breach of peace whether committed in a public place or a private place.

If there is anything further, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

Enclosure