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The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES M. CONDON  
ATTORNEY GENERAL

July 19, 2002

Captain C.W. Cunningham  
Greenville County Sheriff's Office  
4 McGee Street  
Greenville, SC 29601

**Re: Your Letter of March 21, 2002**  
**Arrest of Persons While Appearing in Court**

Dear Captain Cunningham:

In your above referenced letter, you ask that this Office answer the following questions:

1. What provisions does the law offer regarding the arrest of persons while they are actually appearing in criminal and civil court (i.e., while appearing in court on tickets, subpoenas, or appearing on summons for jury duty)?
2. Is there any distinction between the arrest of persons appearing in Magistrate's Court, Family Court, General Sessions Court or Common Pleas Court?

S.C. Code Ann. §17-13-60 relates to the circumstances where persons are not to be arrested and provides as follows:

No person shall be arrested while actually engaged in or attending military or militia duty or going to or returning from such duty, nor while attending, going to or returning from any court, as party or witness or by order of the court, except for treason, felony or breach of the peace. But in any such case, process may be served without actual arrest of body or goods.

Obviously, a warrant charging treason or a felony can be served on a person while they are appearing in court or traveling to or from court. A warrant charging crimes of breach of the peace can be served on a person appearing in court or traveling to and from court as well, but what constitutes a crime of breach of the peace is not susceptible to an exact definition.

*Request Letter*

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The District Court of South Carolina interpreted what constituted a breach of the peace in Thompson v. Ford Motor Co., 324 F.Supp. 108 (DCSC 1971). There, the Court stated the following:

In general terms, a breach of the peace is a violation of public order, a disturbance of public tranquility, by any act or conduct inciting to violence. By peace is meant the tranquility which is enjoyed by the citizens of a community, where good order reigns among its members, which is the right of all persons in political society... . 324 F. Supp. at 115.

Furthermore, it is generally accepted that a breach of the peace, unless so restricted by statute, may occur in a privately-owned place, such as a home or hotel-motel room, as well as in a public place. Am. Jur. 2d, Breach of Peace, S.6; See OP. ATTY. GEN. Dated October 25, 1967. Thus, while the term "breach of the peace" is not susceptible to an exact definition, it is clear that it encompasses a great variety of conduct, including various crimes that, although they may not constitute felonies, may nonetheless be classified as a breach of the peace and subject to arrest. In fact, there is virtual unanimous agreement among the courts that treason, felony, and breach of the peace encompass all crimes, whatever their technical classification. See OP. ATTY. GEN. Dated December 21, 1979.

In any event, assuming arguendo that the arrest is deemed illegal, our Supreme Court has repeatedly held that an illegal arrest does not preclude the subsequent prosecution or conviction of the defendant. See State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978) (The illegality of an initial arrest does not bar a defendant's subsequent prosecution and conviction of the offense charged.); State v. McCoy, 255 S.C. 170, 177 S.E.2d 601 (1970) (The fact that an initial arrest may have been unlawful does not bar prosecution of the defendant based on a subsequent indictment by which the court acquires jurisdiction.); State v. Holliday, 255 S.C. 142, 177 S.E.2d 541 (1970) (An unlawful arrest does not preclude the prosecution of the defendant and does not require reversal of the subsequent conviction where all other elements necessary to give a court jurisdiction are present.) Accordingly, while an illegal arrest is not a bar to the subsequent prosecution or conviction of the defendant, it may however suppress evidence obtained as a result of the illegal arrest.

As to your second question, there is no distinction between the arrest of persons appearing in Magistrate's Court, Family Court, General Sessions Court or Common Pleas Court. The cardinal rule of statutory interpretation is to ascertain and give effect to the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Most often, intent is determined by applying the words used in their usual and ordinary significance. Martin v. Nationwide Mut. Ins. Co., 256 S.C. 577, 183 S.E.2d 451 (1971). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899

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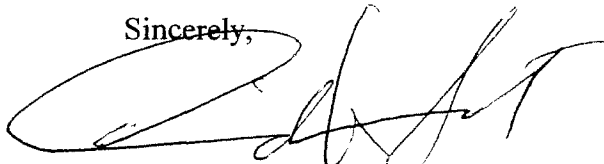
(1988). Finally, Courts must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

The language of S.C. Code Ann. §17-13-60 is clear and unambiguous as the statute specifically says "no person shall be arrested while actually engaged in or attending military or militia duty or going to or returning from such duty, nor while attending, going to or returning from any court . . . ." Thus, the literal interpretation of the term "any court" would include all courts of the unified judicial system as provided for by Article V, § 4 of the South Carolina Constitution and S.C. Code Ann. §14-1-70.

Finally, you reference in your letter S.C. Code Ann. §14-1-140 and S.C. Code Ann. §15-17-10. While this opinion is applicable to S.C. Code Ann. §14-1-140, it appears that this opinion is not applicable to S.C. Code Ann. §15-17-10 as that statute is not related to serving an arrest warrant on an individual in court.

I hope the information provided herein proves helpful. This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Avant', with a large, stylized loop at the beginning.

David K. Avant  
Assistant Attorney General

DKA/jbc