



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 31, 1997

Captain R.D. Abney
Aiken Department of Public Safety
P.O. Box 1177
Aiken, South Carolina 29802

Re: Informal Opinion

Dear Captain Abney:

You have asked for guidance in the areas of statutory provisions respecting immunity from arrest. There appears to be at least two categories of such immunity provisions contained in the Code. The first is that type of constitutional or statutory provision which purports to exempt certain types of protected activity from "arrest" except in cases of "treason, felony or breach of peace." This type of protection is outlined in my letter to you dated October 18, 1996. There, I cited a number of such provisions, including Section 14 of Article III of the South Carolina Constitution. In my letter to you, I noted that the exception from immunity in cases of "treason, felony and breach of the peace" is recognized to encompass all crimes, whatever their technical classification, and is deemed through such provisions to confer immunity from arrest only in civil cases. These provisions are found in Act III, §14 [immunity from arrest except in cases of treason, felony and breach of the peace for members of General Assembly in going to and returning from legislative session]; Section 14-1-140 [all persons going to, attending on, returning from the courts of record of the state are free from arrest except on criminal process for treason, felony and breach of peace]; Article II, §11 [electors shall be privileged from arrest on the days of election during their attendance at the polls for voting and going to and returning therefrom except for treason, felony and breach of the peace]; Article XIII, §2 [volunteers and militia forces are exempt from arrest by warrant or other process while in active service or attending muster or the election of officers or while going to or returning therefrom except for treason, felony and breach of the peace]; §17-13-60 [militia duty]; §28-1-2160 [military duty].

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There is also found in the Code a number of statutes which make certain activity immune from civil and criminal liability. Among these are §19-9-40 [resident witness to attend out-of-state proceedings]; §19-9-110 [non-resident witness]; §15-74-30 [bona fide charitable or non-profit organizations receive distressed food in good faith]; §16-3-1820 [filing a complaint for stalking or harassment]; §20-4-110; §20-7-540; §38-74-70; §43-33-390; §43-38-40; §44-7-70; §44-7-520; §44-26-220; §44-30-50; §44-36-40; §44-38-80; §44-43-380; §44-66-70; §44-77-90; §44-78-35; §44-115-140; §45-2-30; §48-1-300; and §62-5-504. All of the foregoing provisions bestow immunity from criminal liability for various acts or activities. Each of these provisions would need to be examined individually in light of their particular facts and circumstances to determine the applicability thereof.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/elb