



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 2, 1998

Colonel D.M. Tomasik, USA, Retired
Vice President for Facilities and Engineering
The Citadel
171 Moultrie Street
Charleston, South Carolina 29409

RE: Informal Opinion

Dear Colonel Tomasik:

Your opinion request has been forwarded to me for reply. You have asked whether The Citadel may implement a smoke-free building policy. Further, you have asked whether this policy may also apply to smokeless tobacco.

In most cases, the property of a college is under the control of the governing body of a university. 15A Am.Jur.2d Colleges and Universities §35. It has been declared that a college has inherent power to promulgate rules and regulations to properly discipline, to appropriately protect itself and its property, and to expect students to adhere to generally accepted standards of conduct. 15A Am.Jur.2d Colleges and Universities §23. Indeed, college officials have the duty and administrative responsibility to make and enforce reasonable rules applicable to students, faculty members, and campus invitees alike to insure the maintenance of order and decorum within the educational system. *Id.* Generally, a college has the care, custody, control and management of the lands, grounds, buildings, facilities and equipment of the college.

Here, the General Assembly has granted the Board of Visitors of The Citadel with the power to establish such regulations as it may deem necessary for the organization and good government of said college and establish bylaws for the management thereof as shall not be inconsistent with the laws of this State or of the United States. S.C. Code Ann. § 59-121-50. There is no law which requires that an individual must be allowed to smoke

or use smokeless tobacco on college campuses. Thus, Consistent with the powers granted by the General Assembly, The Citadel's inherent power to protect itself and its property, and The Citadel's control and management of its buildings, it would be within The Citadel's power to institute a smoke-free building policy. In addition, for the same reasons, The Citadel may also implement a similar policy regarding smokeless tobacco. See Op. Atty. Gen. dated May 4, 1971 (regarding the University of South Carolina Board of Trustees' authority to promulgate rules and regulations concerning the sale and consumption of alcohol on campus). Of course, any such policies are within the discretion of the Board of Visitors. This opinion should not be construed so as to comment on the appropriateness of such policies.

Even if The Citadel does not adopt rules and regulations concerning smoking in campus buildings, the Clean Indoor Air Act of 1990 would apply in many situations. This act is codified at S.C. Code Ann. § 44-95-10 et seq. Under the act, it is unlawful for a person to smoke or possess lighted smoking material in any form in the listed public indoor areas except where a smoking area is designated as provided for in the act. The public areas listed in the act include the following:

(4) government buildings, except health care facilities as provided for in this section, except that smoking may be allowed in enclosed private offices and designated areas of employee break areas. However, smoking policies in the State Capitol and Legislative Office Buildings must be determined by the office of government having control over its respective area of the buildings. "Government building" means buildings or portions of buildings which are leased or operated under the control of the State or any of its political subdivisions, except those buildings or portions of buildings which are leased to other organizations or corporations;

The Citadel is a state institution created by the State of South Carolina. See S.C. Code Ann. § 59-121-10 et seq. and S.C. Code Ann. § 59-107-10. For the most part, those buildings owned by The Citadel would be technically owned by the State of South Carolina. The fact that The Citadel owns and operates these buildings would also make them "under the control of the State" for purposes of the act.

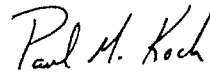
Based on the foregoing, buildings owned by The Citadel would fall under the "government buildings" definition of the act. Thus, it is unlawful for a person to smoke or possess lighted smoking material in any form in these buildings except as may be allowed in enclosed private offices and designated areas of employee break areas.

Colonel Tomasik
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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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,

A handwritten signature in cursive script, reading "Paul M. Koch".

Paul M. Koch
Assistant Attorney General