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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 6, 1995

Bryan Vaughn, Safety Coordinator
Lancaster County Schools District
Post Office Box 130
Lancaster, South Carolina 29721-0130

RE: Informal Opinion

Dear Mr. Vaughn:

Attorney General Condon has referred your letter to me for reply. You have asked several questions regarding S.C. Code Ann. Sec. 16-23-420 which proscribes the carrying or displaying of firearms in public buildings or areas adjacent thereto. Your questions are as follows:

1. What areas are considered an adjacent area?

2. Do parking lots located on school grounds qualify?

3. If the weapon is constructively possessed in a vehicle does this law apply?

4. If the individual has a firearm stored in his/her glovebox or trunk, and the vehicle is parked in an adjacent area may we utilize this law?

Section 16-23-420 provides in pertinent part:

> (A) It is unlawful for a person to carry into a private or public school, college or university building, or any publicly owned building, or have in his possession in

> the area immediately adjacent to these buildings, a firearm of any kind, without the express permission of the authorities in charge of the buildings ... .

In interpreting a statute, the primary purpose is to ascertain the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The words of an enactment must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. First Baptist Church of Mauldin v. City of Mauldin, 308 S.C. 226, 417 S.E.2d 592 (1992). Any statute must be interpreted in light of its intended purpose. Spartanburg Sanitary Sewer Dist. v. City of Sptg., 283 S.C. 67, 321 S.E.2d 258 (1984). It must also be remembered that penal statutes must be strictly construed, Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970), but not so as to defeat the obvious legislative intent. State ex rel. Atty. Gen. v. Broad River Power Co., 162 S.E. 93 (S.C. 1932).

I will now answer each of your questions in turn.

1. What areas are considered an adjacent area?

The statute proscribes having a "firearm of any kind" in one's possession "in the area immediately adjacent to these buildings ... ". Of course, each situation must turn upon its own particular set of facts. However, courts have stated that while the word "adjacent" means near to or neighboring and does not import physical contact with something else, yet when qualified by the word "immediately", it necessarily means contiguous or so close to the object as to be almost in contact therewith. City of Lawrenceburg v. Md. Cas. Co., 16 Tenn.App. 238, 64 S.W.2d 69, 71 (1933). Thus, an area "immediately adjacent" to the school building or buildings would normally be the property adjoining thereto. Superior Steel Products Corp. v. Zbytoniewski, 270 Wisc. 245, 70 N.W.2d 671, 673 (1955).

2. Do parking lots on school grounds qualify?

Yes. On several occasions, our Supreme Court has concluded that a parking lot was "immediately adjacent" to a particular building because it abutted it or adjoined it. For example, in McNaughton v. Sims, 247 S.C. 382, 147 S.E.2d 631 (1966), the Court found that a manufacturing plant parking lot where only plant employees and business visitors parked, was an area immediately adjacent to the plant. In addition, the Court in State v. Shumpert, 195 S.C. 387, 11 S.E.2d 523 (1940), concluded that a parking lot of a filling station and store where customers parked or received "curb service" was immediately adjacent thereto. Concluded the Shumpert Court,

> [c]learly the graveled parking area to which we have referred was a place maintained for and devoted by the appellant to the conduct of his business. It was there that he invited customers and patrons to park their automobiles for the purpose of being served just as truly as though their wants were being attended to within the walls of his store or filling station.

11 S.E.2d at 525-526. Accordingly, under ordinary circumstances, it is my opinion that the school parking lot would be an area "immediately adjacent" to the school building or buildings.

3. If the weapon is constructively possessed in a vehicle does this law apply?

Yes. An analogous case is State v. Halyard, 274 S.C. 397, 264 S.E.2d 841 (1980). There, the defendant was prosecuted for possession of a sawed-off shotgun. At the time of his arrest, he had the shotgun protruding from underneath the driver's side of his car. The defendant asserted that the trial court erred in refusing to direct a verdict or acquittal in his favor when there was insufficient evidence to prove him as being in possession of the shotgun. The Court's analysis bears repeating here:

> This court has repeatedly recognized that a conviction for possession of contraband drugs requires proof of actual or constructive possession, coupled with knowledge of the presence of the drugs. To prove constructive possession the State must show a defendant had dominion and control, or the right to exercise dominion and control over the substance. Such possession may be established by circumstantial as well as direct evidence. More than one person may possess the same property simultaneously. State v. Brown, 267 S.C. 311, 227 S.E.2d 674 (1976); see also State v. Wise, 272 S.C. 384, 252 S.E.2d 294 (1979); State v. Ellis, 263 S.C. 12, 207 S.E.2d 408 (1974); State v. Tabory, 260 S.C. 355, 196 S.E.2d 111 (1973).
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> Although this court has never before so held, the same principles are applicable in regard to possession of firearms or other objects. See United States v. Richardson, 504 F.2d 357 (5th Cir. 1974), cert. den. 420 U.S. 978, 95 S.Ct. 1406, 43 L.Ed.2d 659 (1974). The rule is that unless there is a failure of competent evidence tending to prove the charge in the

> indictment, a trial judge should refuse a defendant's motion for a directed verdict of acquittal. State v. Tyner, 273 S.C. 646, 258 S.E.2d 559 (1979). We believe the evidence here, taken in the light most favorable to the State was more than sufficient to make a jury issue as to whether appellant was in constructive, if not actual, possession of the sawed-off shotgun at the time he was arrested. Courts in other jurisdictions have held on similar facts that the question of possession was properly submitted to the jury and that the jury was justified in finding the defendant in possession of the firearm. See County Court of Ulster v. Allen, 442 U.S. 140, 99 S.Ct. 2213, 60 L.Ed.2d 777 (1979); People v. Gant, 70 Cal.Rptr. 801, 264 Cal.App.2d 420 (1968) Kennedy v. State, 136 Ga.App. 305, 220 S.E.2d 788 (1975); People v. Cannon, 18 Ill.App.3d 781, 310 N.E.2d 673 (1974), and cases cited therein; Commonwealth v. Albano, 373 Mass. 132, 365 N.E.2d 808 (1977); State v Dobbins, 277 N.C. 484, 178 S.E.2d 449 (1971).

Therefore, it is my opinion that the doctrine of constructive possession is applicable to Section 16-23-420.

4. If the individual has a firearm stored in his/her glovebox or trunk, and the vehicle is parked in an adjacent area, may we utilize this law?

Yes. As noted above, it is well-settled that placement of a weapon in a trunk or glove compartment may, depending upon the facts and circumstances, constitute constructive possession of such weapon. See, State v. Halyard, supra, the test enunciated and cases cited therein. See also, State v. Marsh, 78 Or.App. 290, 716 P.2d 261 (1985) [constructive possession of weapon in automobile trunk]; People v. Ehn, 24 Ill.App.3d 340, 320 N.E.2d 536 (1974) [constructive possession of shotguns in car trunk]; People v. Masters, 67 A.D.2d 818, 413 N.Y.S.2d 59 (1979) [constructive possession of a pistol in a car's glove compartment]. As the Court held in State v. Halyard, supra, it is usually a question for the jury as to whether the "... defendant had dominion and control, or the right to exercise dominion and control ...". If so, Section 16-23-420 is applicable and is violated if a firearm is constructively possessed in an area "immediately adjacent to" school property, such as the school's parking lot.

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 kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Attorney General

RDC/ph