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The State of South Carolina



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The Honorable Herbert Kirsh
Member, House of Representatives
532A Blatt Building
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Dear Representative Kirsh:

You have asked whether or not a member of the General Assembly is immune for speeding, pursuant to Article III, Section XIV of the South Carolina Constitution. It is our opinion that there exists no such immunity. Article III, §XIV of the South Carolina Constitution states that:

The members of both houses shall be protected in their persons and estates during their attendance on, going to and returning from the General Assembly, and ten days previous to the sitting and ten days after the adjournment thereof. But these privileges shall not protect any members who shall be charged with treason, felony or breach of the peace. [Emphasis added].

In attempting to interpret this provision, it is first important to discern the meaning of the phrase "treason, felony or breach of the peace" as applied in the context of speeding by members of the General Assembly. Under ordinary circumstances speeding would not be considered a felony under South Carolina law. Thus, the issue may be narrowed to whether speeding constitutes a "breach of the peace" as used in Article III, §XIV. It is the opinion of this Office that speeding as a criminal misdemeanor in South Carolina, represents a "breach of peace" as used therein, and thus members of the General Assembly are entitled to no constitutional immunity from being stopped for, charged with and convicted of such offense.

REQUEST LETTER

No South Carolina case which directly interprets the phrase "treason, felony, or breach of the peace" as used in Article III, §XIV, in this context has been found. However, numerous other courts, both federal and state, have construed the phrase. There is virtual unanimous agreement among these courts that "treason, felony and breach of the peace" encompasses all crimes, whatever their technical classification. Such language historically has been deemed to "confer[s] a privilege . . . only in civil cases, since the quoted words of exception are broad enough to include all crimes within the exception of the privilege." 81A C.J.S., States, §45, See also, 5 Am.Jur.2d, Arrest, §104; 1 A.L.R. 1156.

The United States Supreme Court made a scholarly examination of the historical meaning of the phrase in Williamson v. United States, 207 U.S. 425 (1908). There the Court construed Article I, §VI, Clause I of the federal Constitution, which extends a similar [to South Carolina's] privilege and immunity to members of Congress. Williamson examined numerous constitutional treatises and common law works, each defining the meaning of the phrase as used in England and in state constitutional provisions. From these sources, the Court discerned that the historical meaning of the phrase unquestionably included all criminal offenses, thereby extending no immunity or privilege whatever to a legislator for any criminal act. Moreover, the Court observed that due to the constantly shifting technical meaning of the terms "treason, felony or breach of the peace," this constitutional provision must necessarily be given its historical meaning, encompassing all crimes, for the phrase to have any meaning whatever, and to avoid continuous confusion as to the technical meaning of the words employed. Therefore, the Court held that "the term 'treason, felony, and breach of the peace,' as used in the constitutional provision relied upon, excepts from the operation of the privilege all criminal offenses. . . ." Supra at 445-6. See also, In re Wilkowski, 270 Mich. 687, 259 N.W. 658.

This conclusion has been reached in several cases involving similar state constitutional provisions, where immunity from arrest and prosecution for traffic offenses was sought by a legislator. In Ex parte Emmett, 7 P.2d 1096, a member of the state assembly sought constitutional immunity for violation of a traffic ordinance. The court, after tracing the constitutional history of the provisions, observed that

It is not necessary for us to decide that a violation of the ordinance referred to herein constitutes a breach of the peace as defined by our Criminal Codes, as the cases we have cited show that the words of the Constitution are taken in their generic sense and include all crimes known to the common law. Misdemeanors are crimes known to the common law.

We may state, however, that violations of the traffic ordinances would necessarily lead to disorder, and in large measure impair personal peace and security.

Supra at 1099.

A similar conclusion was reached in Illinois and Oklahoma in the context of speeding offenses. In People v. Flinn, 47 Ill. App.3d 357, 362 N.E.2d 3, a defendant state legislator was convicted of speeding while returning home from legislative business. The Court, in following Williamson v. United States, supra, observed that the term "breach of the peace" "had not originally the same meaning as 'disturbing the peace' as it might be thought of in modern usage, but is derived from 'breaching the King's peace,' a term embracing the whole range of crimes at common law." Supra, at 5; see also, United States v. Brewster, 408 U.S. 501, 521 (1972). Thus speeding, a misdemeanor in Illinois, was deemed a "breach of the peace", for purposes of Illinois' constitutional provision, "especially since such violations . . . endanger the lives and security of the people of the state." Supra at 6. Therefore, Illinois legislators were entitled to no privilege or immunity from speeding violations. For a similar conclusion, see also, Howard v. Webb, Okl., 570 P.2d 42; Swope v. Commonwealth, Ky. 385 S.W.2d 57.

This conclusion is quite consistent with the few South Carolina cases and authorities which have construed the provision in other contexts. For example in Tillinghast and Arthur v. Thomas Carr, 4 McCord 152, the Court noted that the framers of the provision "intended to exempt members from the time mentioned, from all suits, whether by arrest or summons." [emphasis added]. The entire thrust of the opinion concerns immunity from civil process, whether the civil arrest or summons, with no mention whatever of any immunity from criminal prosecution. See also: Worth v. Norton, 56 S.C. 56, 33 S.E. 792; Gregg v. Summers, 1 McCord 461. Moreover, in the colonial period of the state's history, members of the Assembly "were freed from arrest in civil cases." [emphasis added]. William Simpson, The Practical Justice of the Peace and Parish Officer (1769).

There is no question that speeding is a criminal offense in South Carolina. Code of Laws of South Carolina, §56-5-1520 states that "[a]ny person violating the speed limits herein established shall be deemed guilty of a misdemeanor and upon conviction . . . shall be fined or imprisoned as follows . . ." It follows that speeding as such necessarily constitutes a "breach of the peace" for the purposes of the constitutional provision. Thus, members of the General Assembly are entitled to no privilege or immunity from being

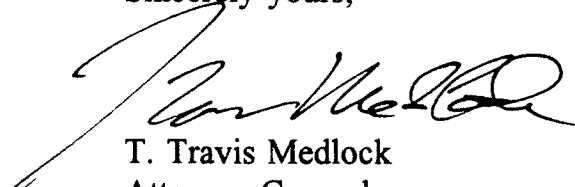
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stopped and charged with, prosecuted or convicted for speeding in violation of the laws of South Carolina or any subdivision thereof.¹

CONCLUSION

In conclusion, it is our opinion that Art. III, §14 bestows no immunity from arrest or from prosecution and conviction to members of the General Assembly for speeding or any other traffic or criminal offense. With respect to crimes, the constitutional immunity provision simply is not applicable. As the court stated in Ex Parte Emmett, supra, there is no good reason for shielding legislators or other public officials "from apprehension for crimes against the peace and dignity of the state." 7 P.2d at 1098. And as the Court held in People v. Flinn, 362 N.E.2d supra at 6, the design of constitutional provisions similar to Art. III, §14 clearly was never "to allow public employment to be a sanctuary for crime" Accord., Eaddy v. Eaddy, 283 S.C. 582, 324 S.E.2d 70 (1984) [reference to civil process]. Accordingly, it is our view that in terms of criminal offenses, such as speeding, a member of the General Assembly possesses no greater privilege than the ordinary citizen, and thus has no immunity whatsoever for violation of this State's traffic laws by virtue of office.

Sincerely yours,



T. Travis Medlock
Attorney General

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¹This opinion is consistent with and reaffirms an opinion issued by the former Attorney General Daniel R. McLeod, S. C. Op. Atty. Gen., No. 79-138, December 21, 1979.