

5998 Library



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

October 18, 1996

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

Re: Informal Opinion

Dear Captain Abney:

You state in your letter that "[t]he Aiken Department of Public Safety is working towards Accredited Status for its law enforcement operations." You therefore seek guidance "in the areas of handling traffic law violations committed by persons engaged in, going to, attending, or returning from court as a juror, witness or by order of the court."

S.C. Code Ann. Sec. 14-1-140 provides in pertinent part that

[a]ll persons necessarily going to, attending on, returning from, the courts of record of this State shall be free from arrest, except on criminal process for treason, felony, or breach of the peace.

In a previous opinion of this Office, dated April 7, 1983 (enclosed), we construed this provision. There, we applied an earlier opinion, dated December 21, 1979, which had interpreted Article III, Section 14 of the State Constitution. This constitutional provision grants immunity to members of the General Assembly in going to and returning from sessions of the Legislature, except in cases of arrest for "treason, felony and breach of the peace." The 1979 opinion concluded that the language

Captain Abney
Page 2
October 18, 1996

"... treason, felony, and breach of the peace' encompasses all crimes, whatever their technical classification. Such language historically has been deemed to "confer a privilege ... only in civil cases, since the quoted words of exception are broad enough to include all crimes within exception of the privilege."

The 1979 opinion of this Office was reaffirmed in Op. Atty. Gen., Op. No. 93-7 (February 17, 1993) (copy enclosed). Attorneys General Opinions from other jurisdictions are in agreement. See 1993 WL 364398 (N.M.A.G. Op. No. 93-04, March 5, 1993) [clause protects legislators only from civil arrest]; Mo. Op. No. 169 (August 12, 1977) [immunity "does not apply to arrests which are criminal in nature and such legislators may be arrested during such sessions for criminal or ordinance violations."]; Tenn. Op. Atty. Gen., No. 80-363 (July 11, 1980) [clause "does not provide immunity to legislators for traffic offenses."]; 1979 WL 30927 (Wash. A.G., January 5, 1979) [clause "relates to the possibility of civil arrest only and is not a privilege from arrest for the commission of a crime"].

Thus, our conclusion in the April 7, 1983 opinion interpreting Section 14-1-140 remains the opinion of this Office. There, we concluded:

it appears that the conclusion of this Office in the referenced opinion [of December 21, 1979] that legislators are not immune from being charged with a traffic offense pursuant to language denying any immunity where the legislator is charged with treason, felony, or breach of the peace should be equally applicable to an interpretation of Section 14-1-140, supra. Therefore, the ticket charging _____ with speeding should not be dismissed inasmuch as speeding would constitute a breach of the peace for which no immunity is available pursuant to Section 14-1-140, supra.

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.

Captain Abney
Page 3
October 18, 1996

With kind regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read 'RDC', written in a cursive style.

Robert D. Cook
Assistant Deputy Attorney General

RDC/an
Enclosures