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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 18, 1997

Sergeant S. E. Buffkin
Darlington Police Department
P. O. Box 164
Darlington, South Carolina 29532

Re: Informal Opinion

Dear Sergeant Buffkin:

You have sought an opinion regarding the following situation:

[w]e recently received a call to the residence of a subject who complained that her ex-husband was at her residence and was about to get involved in an altercation with a male friend of hers. Upon arrival of the officer the ex-husband was confronted and he informed the police that the male subject in his wife's home had a gun. Officers confronted the subject and retrieved a handgun from him. He stated that he had the gun for his protection because he was fearful of the ex-husband. The question I have for you is the gun was confiscated from him without an arrest being made and the owner was informed that he could get the gun back if he came by the police department.

Can we legally take a gun from a subject with or without an arrest being made even though he is not on his own property. Or could he have been arrested for the handgun even though he had permission to be there by the owner. No arrest was made in this case [because] no one was threatened. The complainant just wanted the ex-husband to leave and he did so. He stated he took the gun to prevent it from being used.

Request Letter

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I am enclosing a copy of an Informal Opinion, dated June 18, 1997, which I just recently issued addressing your question. Regardless of whether or not an exception to the Concealable Weapons law exists, see, e.g. S.C. Code Ann. Sec. 23-31-225 [no carrying of a concealable weapon into the residence or dwelling of another without express permission of owner], the Opinion concludes that the issuance of a Concealable Weapons permit does not prevent an officer's pat-down and removal of a concealed weapon when the officer reasonably believes his safety or life is in danger. See, Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868 (1968) and the discussion thereof in the Informal Opinion referenced above. The General Assembly did not intend, in my opinion, to override pre-existing law such as Terry, which is designed to protect the officer's safety, in its enactment of the Concealable Weapons statute. See, S.C. Code Ann. Sec. 23-31-215 (R) ["No provision contained within this article shall ... diminish or affect the duty of care owed by and liability accruing to, as may exist at law immediately prior to the effective date of this article"]. Thus, Terry is controlling in the situation which you reference and an officer may temporarily remove a concealed weapon based upon the Terry standard regardless of the fact that the individual may possess a CWP permit or regardless of whether or not an exception to the CWP law exists because the individual has not received permission from the owner to bring the weapon onto his or her premises.

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/ph

Enclosure