

# The State of South Carolina



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February 25, 1991

The Honorable Warren K. Giese  
Senator, District No. 22  
P. O. Box 142  
Gressette Senate Office Building  
Columbia, South Carolina 29202

Dear Senator Giese:

In a letter to this Office you referenced proposed legislation, S.200, which deals with the prohibition against dumping litter on private or public property. Such legislation increases the fine for dumping litter on such property to a fine of not less than one hundred dollars nor more than one thousand dollars for each offense. You have questioned means to strengthen the rights and protection of homeowners in the event of a violation of the littering statute. You asked "How is a case made against the offender who dumps trash or litter on another's property and what would be needed to amend the current legislation in order to accomplish this." At your suggestion I contacted Mr. Bob Scott with the State Forestry Association and he indicated that his concerns were with private property owners and their problems in terms of costs and responsibilities for clean-ups where there has been illegal dumping.

Of course, any decision regarding legislation is strictly a matter within the discretion of the General Assembly. As to your question regarding how a case is made, each situation would depend on the various facts at issue. The decisions as to who would initiate a case may vary from that of the local property owner who seeks an arrest warrant to an investigating law enforcement agency. As to Mr. Scott's concerns regarding clean-ups where there has been illegal dumping, present Section 16-11-700(C)(6) provides

In addition to any other punishment authorized by this section, in the discretion of any court in which conviction is obtained, the person may be directed by the judge to pick up and remove from any public place or any private property, with prior permission of the legal owner upon which it is established by competent evidence

The Honorable Warren K. Giese  
Page 2  
February 25, 1991

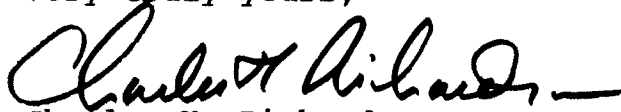
that the person has deposited litter, all litter deposited on the place or property by anyone before the date of execution of sentence.

As to possible means of strengthening the laws in regard to the property owner, consideration could be given to the adoption of a statutory inference similar to that for shoplifting. See: Section 16-13-120 of the Code ("It is permissible to infer that any person wilfully concealing unpurchased goods or merchandise of any store or other mercantile establishment either on the premises or outside the premises of the store has concealed the article with the intention of converting it to his own use without paying the purchase price thereof ...." In State v. Burris, 281 S.C. 47, 314 S.E.2d 316 (1984) the State Supreme court determined that former Section 16-13-120, which provided a basis for establishing prima facie evidence of shoplifting by the concealment of unpurchased goods, was unconstitutional. See also: State v. Wells, 282 S.C. 12, 316 S.E.2d 409 (1984).

Any such statutory language amending Section 16-11-700 would have to be drafted in a manner consistent with the rulings of the United States Supreme Court in Sandstrom v. Montana, 442 U.S. 510 (1979). In Sandstrom the Court held that a jury instruction on the issue of intent which either shifted the burden of proof to a defendant or constituted a conclusive presumption would deprive the defendant of due process. Therefore any amendment to the litter statute must not deprive a defendant of any due process right that the State prove beyond a reasonable doubt each element of the offense or shift the burden to a defendant to disprove the element of intent as to the offense with which the defendant is charged.

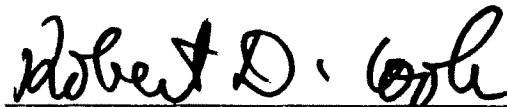
With kind regards, I am

Very truly yours,

  
Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

  
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