

The State of South Carolina



Office of the Attorney General

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January 23, 1991

Robert M. Stewart, Chief
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Dear Chief Stewart:

You have asked whether the offense of burning an untenanted or unoccupied building is a crime of moral turpitude. S.C. Code Ann. § 16-11-560 provides

Whoever shall maliciously, unlawfully and wilfully burn or cause to be burned or cut or cause to be cut or destroyed any untenanted or unfinished house or building or any frame or frames of timber of any other person made and prepared for or towards the making of any house or houses, so that the same shall not be suitable for the purposes for which it was prepared, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by fine or imprisonment, or both, in the discretion of the court.

The South Carolina Supreme Court has defined moral turpitude as

... an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man ...

State v. Yates, 280 S.C. 29, 310 S.E.2d 805, 810 (1982), citing State v. Horton, 271 S.C. 413, 248 S.E.2d 263 (1978). See also State v. Morris, 289 S.C. 294, 345 S.E.2d 477 (1986); State v. Drakeford, 290 S.C. 338, 250 S.E.2d 391 (1986). See also Ops. Atty. Gen. March 6, 1990, June 13, 1989 and March 11, 1988. In determining whether a crime involves moral turpitude one must focus

on the duty to society and fellow man which is breached by the commission of the crime ...

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State v. Ball, 292 S.C. 71, 73, 354 S.E.2d 908 (1987), as

crimes which involve primarily self-destructive behavior generally do not involve moral turpitude.

Id. at 292 S.C. 74.

In finding that arson is a crime of moral turpitude, the South Carolina Supreme Court in State v. Yates, 280 S.C. 29, 310 S.E.2d 805 (1982) relied upon the fact that the offense involved

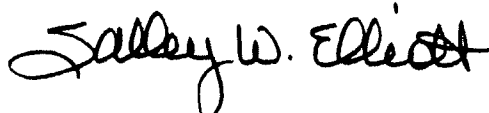
the destruction of property of another with not only intent to deprive the true owner of its use but also to deprive any other person of its use and benefits. 310 S.E.2d at 810.

The Court relied on the malicious, willful, and unlawful nature of the destruction of property involved in concluding that the offense of malicious destruction of property is also a crime of moral turpitude. State v. Perry, 294 S.C. 311, 364 S.E.2d 201 (1988).

By definition, the burning of an untenanted or unoccupied building involves the malicious, unlawful, or willful destruction of the property of another. Using the same reasoning as the Court in State v. Yates, supra, and State v. Perry, supra, and because it involves a secretive act contrary to justice, honesty, and good morals, State v. Horton, supra, which may cause harm to fire fighters or neighbors, this Office concludes that the offense of burning an untenanted or unoccupied building is a crime of moral turpitude.

However, as the issue has not been addressed by the South Carolina Supreme Court, we would caution that the opinion is not free from doubt.

Very truly yours,



Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:



Robert D. Cook
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