

# The State of South Carolina



## Office of the Attorney General

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July 18, 1991

The Honorable Richard A. Harpootlian  
Solicitor, Fifth Judicial Circuit  
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Dear Solicitor Harpootlian:

You have asked for our interpretation of Section 16-15-365 of the Code. Specifically, you have asked whether that provision which prohibits exposure of "private parts" refers to female breasts.

Section 16-15-365 provides as follows:

Any person who wilfully and knowingly exposes the private parts of his person in a lewd and lascivious manner and in the presence of any other person, or aids or abets any such act, or who procures another to perform such act, or any person, who as owner, manager, lessee, director, promoter, or agent, or in any other capacity knowingly hires, leases, or permits the land, building, or premises of which he is owner, lessee, or tenant, or over which he has control, to be used for purposes of any such act, is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than six months or fined more than five hundred dollars or both.

This statute was enacted in 1987 and, to our knowledge, our courts have not yet had the opportunity to interpret this provision.

However, it should be noted that this section closely parallels Section 16-15-130 which prohibits indecent exposure. In an opinion

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issued during the administration of former Attorney General Daniel R. McLeod, this Office defined indecent exposure as

... the exhibition of those private parts of the person which instinctive modesty, human decency, or self respect requires shall be customarily kept covered in the presence of others....

Op. Atty. Gen., No. 3165 (August 12, 1971), p. 127. That opinion found that the foregoing definition is "... broad enough to include the female breasts ...." While other courts might disagree, see e.g. State v. Jones, 171 S.E.2d 468 (N.C. 1970), we have examined this previous opinion and found that it is not clearly erroneous. Indeed, this long-standing interpretation of Section 16-15-130 has remained unaltered by the General Assembly and is, therefore, presumed to be correct. Scheff v. Township of Maple Shade, 374 A.2d 43 (1977). See also, People v. Garrison, 412 N.E.2d 483, 490 (Ill. 1980) [Illinois Supreme Court rules that "those private parts of the person which instinctive modesty, human decency, or common propriety require shall be customarily kept covered in the presence of others" includes female breasts.]

In view of the obvious close parallel between Sections 16-15-130 and Section 16-15-365, we see no reason that the foregoing Op. No. 3165 is inapplicable to an interpretation of the latter statute, and we would, therefore, conclude that for purposes of Section 16-15-365 "private parts", as referenced therein, includes female breasts. 1/

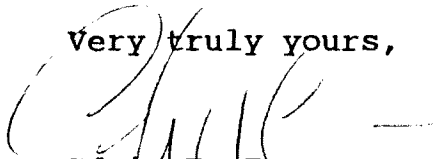
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1/ We also recognize that statutes which relate to the same subject matter or to the same legislative scheme should be construed together and in harmony. Fidelity and Casualty Insurance Company of New York v. Nationwide Insurance Company, 278 S.C. 332, 295 S.E.2d 783 (1982); Dantzler v. Callison, 230 S.C. 75, 94 S.E.2d 177 (1956). Consistent with that reference, the comments to the State's obscenity laws prepared by the Department of Justice National Obscenity Enforcement Unit suggest that the statutory definition of "sexually explicit nudity" found in Section 16-15-375 (a) should serve as a guide as to what is meant by "private parts" as those terms are used in Section 16-15-365. The definition of "sexually explicit nudity" found in Section 16-15-375 (a) expressly includes "the nipple or any portion of the areola of the human female breast." These comments are particularly instructive relative the the legislative intent since they were prepared contemporaneously with the enactment of Section 16-15-365.

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Of course, as we have consistently stated, the foregoing represents a general legal analysis. "As with any prosecutorial decision made by the Circuit Solicitor, the judgment call as to whether to prosecute a particular individual or whether a specific prosecution is warranted, or is on sound legal ground in an individual case, remains a matter within your exclusive discretion and jurisdiction." Op. Atty. Gen. July 11, 1989.

Very truly yours,



Edwin E. Evans  
Chief Deputy Attorney General

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REVIEWED AND APPROVED BY:



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