

The State of South Carolina



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May 13, 1991

Gregory A. Hoover, Chief of Police
Moncks Corner Police Department
118 Carolina Avenue
Moncks Corner, South Carolina 29461

Dear Chief Hoover:

In a letter to this Office you questioned whether Section 16-17-530 of the Code, which prohibits public disorderly conduct, requires the presence of individuals in addition to the defendant and a law enforcement officer for a violation to occur.

Such provision states:

Any person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner, (b) use obscene or profane language on any highway or at any public place or gathering or in hearing distance of any schoolhouse or church or (c) while under the influence or feigning to be under the influence of intoxicating liquor, without just cause or excuse, discharge any gun, pistol or other firearm while upon or within fifty yards of any public road or highway, except upon his own premises, shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or be imprisoned for not more than thirty days.

Reference is made to conduct at a "public place", a "public gathering" or a "public road or highway."

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In State v. Williams, 280 S.C. 305 at 306-307, 312 S.E.2d 555 (1984) the State Supreme Court defined "public place" as

A place to which the general public has a right to resort; not necessarily a place devoted solely to the uses of the public, but a place which is in point of fact public rather than private, a place visited by many persons and usually accessible to the neighboring public ... Any place so situated that what passes there can be seen by any considerable number of persons, if they happen to look ... Also, a place in which the public has an interest as affecting the safety, health, morals, and welfare of the community. A place exposed to the public, and where the public gather together or pass to an fro.

The Tennessee Court of Criminal Appeals in State v. Lawson, 776 S.W.2d 139 at 140 (1989), which involved a charge of public drunkenness in circumstances where the defendant had been stopped for driving at a high rate of speed, similarly determined that a "public place" is considered to be "... a place to which the general public has a right to access." The Court further stated

A location to which such a right of access exists does not lose its character as a "public place" simply because others are not present to observe the defendant's drunken condition. Moreover, ... the appellant's presence inside a vehicle on a public road does not alter the "public" character of that road or convert the appellant's condition into one of private rather than public intoxication.

776 S.W.2d at 140-141. See also: State v. Kersh, 313 N.W.2d 566 (Iowa 1981) (The defendant was arrested for public intoxication while sitting in his car "in a place to which the public was permitted access." Therefore, the Court concluded that the conduct occurred in a "public place".); Cabaret Inc. v. Daley, 384 N.E.2d 10 (Ill. 1978) (Although individuals were seated in a club area in which there were no other individuals, the club was open to the public and there could be no expectation of privacy. The indecent conduct which occurred took place in a "public place" within a statute which prohibited lewd conduct in a "public place."); People v. Deignan, 457 N.Y.S.2d 378 (N.Y. 1982) (As to an harassment conviction, the area where the conduct occurred was a "public place," even though at the time the act occurred there were no passersby within

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earshot. The Court noted that the act occurred in an area not off-limits to the public.); People v. Perez, 134 Cal. Rptr. 338 (Cal. 1976) (For purposes of a statute prohibiting drunkenness in a "public place", a "public place" is considered a location readily accessible to those who wish to frequent the area rather than an area which the general public frequents.).

Consistent with the above, it is my opinion that the physical presence of individuals other than a defendant and the law enforcement officer who makes an arrest is not necessary for a disorderly conduct violation. Reference may be had to the definition set forth in Williams in determining whether a location where an act occurs is "accessible to the neighboring public", a "place in which the public has an interest" or a "place exposed to the public."

If there is anything further, please advise.

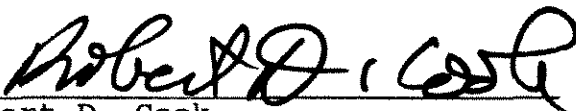
Sincerely,



Charles H. Richardson
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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