

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

April 30, 1991

The Honorable Joseph P. Mizzell
Solicitor, First Judicial Circuit
P. O. Box 1525
Columbia, South Carolina 29115

Dear Solicitor Mizzell:

You indicate that a member of the Santee Town Council has been indicted for Mistreatment of a Child pursuant to S.C. Code Ann. § 20-7-60 (1976, as amended). You have asked that our Office review the indictment which you have provided and issue an opinion for the Governor's consideration as to whether the offense would constitute a crime of moral turpitude.

Moral turpitude is defined by the South Carolina Supreme Court 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. Horton, 271 S.C. 413, 414, 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, 350 S.E.2d 391 (1986); State v. Yates, 280 S.C. 29, 310 S.E.2d 805 (1982). See also Ops. Atty. Gen. March 20, 1991, January 23, 1991, March 6, 1990, June 13, 1989, and March 11, 1988. Moral turpitude is adaptive to the public morals at a given time, 58 C.J.S. Moral, p. 1202, and "implies something immoral in itself, regardless of whether it is punishable by law as a crime." State v. Horton, supra, 248 S.E.2d at 263 (1978).

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The offense charged in the indictment is based on S.C. Code Ann. § 20-7-60 which provides

Whoever, being legally liable, either as parent, guardian, or other person having temporary or permanent custody, to provide for any child, mentally incompetent or helpless person, necessary food, clothing, lodging, or medical or other treatment as recognized by § 40-47-40, shall wilfully and without lawful excuse refuse or neglect to provide, as defined in § 20-7-490, therefor, or shall unlawfully and maliciously do, or cause to be done, any bodily harm to that person so that his life shall be endangered, or his health or comfort shall have been, or is likely to be, permanently injured, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than two hundred dollars or imprisoned for not exceeding two years with or without hard labor, or both, at the discretion of the circuit court.

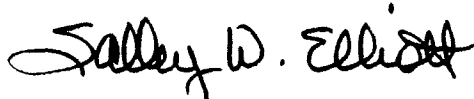
While Section 20-7-60 has not been addressed by the South Carolina Supreme Court, the Court did recognize that the intent of a similar statute was to "provide protection for persons whose tender years or helplessness renders them incapable of self-protection." State v. Jenkins, 278 S.C. 219, 294 S.E.2d 44, 45 (1982). The United States Court of Appeals for the Ninth Circuit has considered whether child beating was a crime of moral turpitude within the meaning of the immigration statutes. Guerrero de Nodahl v. Immigration and Naturalization Service, 407 F.2d 14 (1969). The Court found significant the offensive nature of the act to American ethics and concluded that child beating was a crime of moral turpitude.

Based upon a review of the facts set forth in the indictment, it is the opinion of this office that the offense charged in the indictment constitutes one of moral turpitude. See State v. McFarlane, 279 S.C. 327, 306 S.E.2d 611 (1983) (Criminal sexual conduct with a minor is a crime of moral turpitude); Guerrero de Nodahl v. Immigration and Naturalization Service, *supra.*; Arizona Atty. Gen. Op. R89-114 (Sexual abuse of minor, sexual exploitation of a minor, contributing to the delinquency of a minor, commercial exploitation of a minor, dangerous crime against children, sexual conduct with minor, molestation of a child, and child abuse are crimes of moral turpitude).

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We caution, however, that the opinion is not free from doubt as no South Carolina decisions were found which addressed the issue.

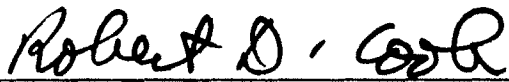
Sincerely,

A handwritten signature in cursive script, reading "Salley W. Elliott".

Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:

A handwritten signature in cursive script, reading "Robert D. Cook".

Robert D. Cook
Executive Assistant for Opinions