

The State of South Carolina



Office of the Attorney General

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May 17, 1989

The Honorable Edward H. Overcash, Jr.  
Chief Judge, Spartanburg Magistrate Court  
Spartanburg County Courthouse  
Room 134  
Spartanburg, South Carolina 29301

Dear Judge Overcash:

In a letter to this Office you questioned whether Section 16-1-60 of the Code which defines "violent crimes" effectively repeals Section 16-23-10(c) of the Code which defines "crime of violence" when used in Article 1 of Chapter 23. Such Article details offenses involving weapons.

Section 16-1-60 states:

(f)or purposes of definition under South Carolina law a violent crime includes the offenses of murder, criminal sexual conduct in the first and second degree, assault and battery with intent to kill, kidnapping, voluntary manslaughter, armed robbery, drug trafficking as defined in Section 44-53-370(e), arson in the first degree, burglary in the first degree, and burglary in the second degree under Section 16-11-312(B).

Such statute was included as a provision of the "Omnibus Criminal Justice Improvements Act of 1986." Pursuant to Section 16-23-10(c), the term "crime of violence" as used in Article 1 of Chapter 23 includes:

...murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

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As is apparent, Section 16-23-10(c) provides a more extensive list of offenses within the definition of "crime of violence."

An opinion of this Office dated May 2, 1988, while noting that Section 16-1-60 sets forth offenses to be considered within the category of "violent crime", referred to the offenses within the category of a "crime of violence" as set forth in Section 16-23-10(c) in stating that convictions for attempted murder and attempted rape would prohibit an individual from legally purchasing or possessing a handgun in this State. The opinion also noted that the term "crime of violence" is defined identically to Section 16-23-10(c) in Section 23-31-110(c). The latter provision is included in Article 3 of Chapter 31 of Title 23 which also sets forth provisions dealing with the regulation of pistols. Therefore, this Office has previously concluded that Section 16-23-10(c) remains valid and is controlling in defining what offenses constitute "crimes of violence" for purposes of weapons regulation. Such construction is consistent with the principle that generally implied repeals are not favored. See: 1A Sutherland Statutory Construction, Section 23.09; Opinion of the Atty. Gen. dated September 26, 1986. Consistent with such, it appears that Section 16-1-60 should not be construed as having repealed Section 16-23-10(c).

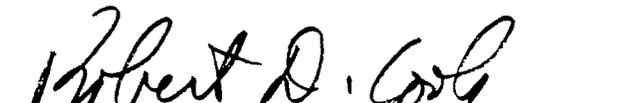
If there is anything further, please advise.

Sincerely,

  
Charles H. Richardson  
Assistant Attorney General

CHR:sds

VIEWED AND APPROVED BY:

  
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EXECUTIVE ASSISTANT FOR OPINIONS