

# The State of South Carolina



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April 8, 1986

The Honorable Robert W. Hayes, Jr.  
Member, House of Representatives  
532-D Blatt Building  
Columbia, South Carolina 29211

Dear Representative Hayes:

In a letter to this Office you referenced certain proposed legislation which ties the sale or rental of a motion picture to the rating imposed by the Motion Picture Association of America (hereafter the "MPAA") or its successor. The bill particularly prohibits the sale or rental of a motion picture bearing a rating of "X" or "R" to an individual under eighteen years of age.

In Eastern Federal Corporation v. Wasson, 281 S.C. 450, 316 S.E.2d 373 (1984), a copy of which is enclosed, the State Supreme Court ruled that a statute which imposed a twenty percent license tax on all motion pictures rated "X" by the MPAA or its successor and on all movies not rated by the MPAA or its successor was an unconstitutional delegation of legislative power in violation of Article III, Section 1 of the State Constitution. The Court noted:

(t)he statute imposes no guidelines for rating of films, but leaves the determination solely to the discretion of the MPAA. The MPAA determines which pictures shall be rated "X" ... This is a clear delegation of legislative power. 281 S.C. at 452.

I am also enclosing a portion of State v. Watkins, 259 S.C. 185, 191 S.E.2d 135 (1972) which dealt with an earlier challenge of a provision of this State's obscenity statutes, former Section 16-414.9 of the 1962 Code, which stated in part that such statutes were inapplicable to motion pictures that carried

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the MPAA's Code Seal of approval. The Court in holding such to be unconstitutional stated:

(n)o ascertainable standards are set forth for the guidance of the M P A A. Exclusion from prosecution cannot be made dependent upon the whim or will of such an association. We therefore hold that section 16-414.9 lacks the constitutionally-required certainty demanded by due process of law. We further hold that the section is an unconstitutional delegation of legislative power. 259 S.C. at 202-203.

Referencing the above decisions of our Supreme Court, it appears that a court could find that the legislation which ties the sale or rental of motion pictures to the rating imposed by the MPAA has constitutional problems in that it amounts to an unconstitutional delegation of legislative power. As stated by the Court in the Eastern Federal Corporation case, the statute as presently written imposes no guidelines as to the rating of films. Instead, the legislation regulates the sale or rental of a motion picture solely on the basis of the rating imposed by the MPAA.

If there are any further questions, please advise.

Sincerely,

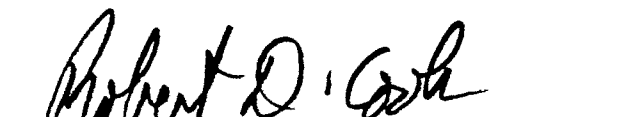


Charles H. Richardson  
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Enclosures

REVIEWED AND APPROVED BY:

  
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