

The State of South Carolina



Office of the Attorney General

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January 28, 1986

C. Anthony Harris, Jr., Esquire
City Attorney, Town of Cheraw
222 Market Street
Cheraw, South Carolina 29520

Dear Mr. Harris:

In a letter to this Office you questioned whether the sale of x-rated videos by businesses in your area to individuals all of whom are over the age of eighteen in the manner specified by you falls under this State's obscenity statutes.

Section 16-15-310 of the Code provides that:

"(n)o person shall intentionally disseminate in any public place any motion picture which he knows or reasonably should know to be obscene within the meaning of Section 16-15-260...."

A person violating such provision is guilty of a misdemeanor and upon conviction shall be punished pursuant to Section 16-15-440 of the Code.

We would note that Section 16-15-270(a) of the Code mandates

"... a judicial determination of the question of whether ... motion pictures ... are obscene prior to their seizure or prior to a criminal prosecution relating to such materials."

Also, pursuant to Section 16-15-270(c) and (d)

"(w)henever any law enforcement officer has reasonable cause to believe that any person is engaged in the sale, display, distribution or dissemination in a public place of any books, magazines, motion pictures or other

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materials which are obscene within the meaning of § 16-15-260, he shall, without seizing such material, notify the solicitor for the judicial circuit in which such material is so believed to be offered. Upon receiving such notification the solicitor for such judicial circuit shall investigate the law enforcement officer's report to determine whether or not sufficient cause exists to seek warrants of search and seizure. If the solicitor determines that sufficient cause does exist, he shall apply to a circuit judge sitting in the judicial circuit where the allegedly obscene material is located for warrants.

(d) A circuit judge may issue warrants for search and seizure to authorize seizure of single copies of suspect material in order to preserve evidence, but only after he has determined the existence of probable cause based upon a viewing of the allegedly obscene material itself or upon examination of factual allegations contained in any affidavit in support of such warrant.

Referencing such, it is clear that the General Assembly has delegated the determination of whether a particular motion picture is obscene, as defined by Section 16-15-260(a) of the Code, solely to the circuit courts of this State. It is equally evident that before submitting the question of whether certain materials are obscene to the court for judicial determination, the solicitor of the circuit should determine whether based upon a law enforcement officer's report sufficient cause exists to seek search and seizure warrants. Therefore, the question addressed in your letter should be referred to your solicitor.

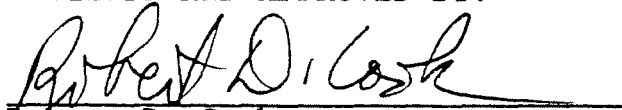
With best wishes, I am

Sincerely yours,


Charles H. Richardson
Assistant Attorney General

CHR/an

REVIEWED AND APPROVED BY:


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