

February 1677

The State of South Carolina

OPINION NO. 95-57
PAGE 165



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-8820

June 7, 1985

The Honorable Donald V. Myers
Solicitor, Eleventh Judicial Circuit
Lexington County Courthouse
Lexington, South Carolina 29072

Re: Opinion Request Concerning whether Conspiracy to Violate
the Contraband Law is a Felony or Misdemeanor
Opinion #1649

Dear Solicitor Myers:

You have requested an opinion from this office concerning whether conspiracy to violate §24-3-950, Code of Laws (1976) is a felony or a misdemeanor. You have further advised us that the defendant conspired to import a quantity of marijuana into the Central Correctional Institution, a prison facility of the South Carolina Department of Corrections. It is our opinion that the crime of conspiracy is a misdemeanor under South Carolina law, but there may be other charging decisions that could cause the same event to be a felony.

The crime of conspiracy has been held by the South Carolina Supreme Court to be a misdemeanor, unless changed by statute as in conspiracy to kidnap [S. C. Code Ann. §16-3-920 (1976)]. State v. Ferguson, 221 S.C. 300, 70 S.E.2d. 355 (1952). In South Carolina Code Ann. §16-17-410 (1976), concerning "conspiracy", it states in its pertinent part "the crime of conspiracy is hereby declared to be a misdemeanor." (Emphasis added). A review of the South Carolina Code reveals no specific "conspiracy to violate §24-3-950" that would raise that act to a felony.

REQUEST LETTER

The Honorable Donald V. Myers
Page Two
June 7, 1985

Depending on the facts of your case, consideration should be given to revising the charge to include an "attempt" to furnish a prisoner contraband in violation of §24-3-950. This section states that:

"it shall be unlawful for any person to furnish or attempt to furnish any prisoner under the jurisdiction of the Department of Corrections with any matter declared by the Commissioners to be contraband. . . . Any person violating the provisions of this section shall be deemed guilty of a felony. . ."

Unlike common law attempts to commit felonies which are misdemeanors, the General Assembly created a statutory exception to this rule South Carolina Code Ann. §24-3-950 when it provided that attempt to furnish contraband is a felony. While both conspiracy and attempt require a specific intent to commit a crime, attempt further requires an overt act which goes beyond mere preparation. Your attention is directed to State v. Quick, 199 S.C. 256, 19 S.F.2d. 101 (1942) and State v. Reaves, 203 S.C. 501, 28 S.E.2d. 91 (1943) in which the South Carolina Supreme Court indicated acceptable levels of conduct for finding "attempts". We were unable to find relevant case law concerning "attempts to furnish contraband".

Another area for your review should be under the drug trafficking statute, §44-53-370(e). In its pertinent part, the statute reads as follows:

"any person who knowingly sells, manufactures, delivers, or brings into the state, or who provides financial assistance or otherwise aids, abets, or conspires to sell, manufacture, deliver, or brings into the state, . . .
(1) Ten pounds of marijuana is guilty of a felony.
. . ."

Since your concern seems to be felony versus misdemeanor, this is an approach that you may want to consider depending upon the facts of your particular case.

The Honorable Donald V. Myers
Page Three
June 7, 1985

If you have any questions about this matter, please
contact me.

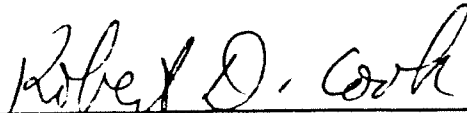
Sincerely,



Donald J. Zelenka
Chief Deputy Attorney General

DJZ/agm

Approved by:



Robert D. Cook
Executive Assistant for Opinions