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The Honorable W. Richard Lee
Member, South Carolina Senate
601 Gressette Building
Columbia, South Carolina 29202

Dear Senator Lee:

You have asked our opinion as to the constitutionality of proposed bill, S-109, which makes it unlawful for any person to give false information to any law enforcement officer concerning the alleged commission of any crime. It is our opinion that the bill as submitted to us is constitutional.

S-109 provides in pertinent part:

> Section 16-17-725. (A) It is unlawful for any person to knowingly give false information to any law enforcement officer concerning the alleged commission of any crime.
>
> (B) Any person violating the provisions of this section is guilty of a misdemeanor and upon conviction must be punished by a fine not to exceed two hundred dollars or by a term of imprisonment not to exceed thirty days.

Our Supreme Court has consistently held that once a bill becomes enacted into law, a court will give the Act great deference in determining its constitutionality. A good synopsis of the standard by which the courts judge the constitutionality of an act of the General Assembly is set forth in Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133, 137 (1946), where the Court stated:

> The supreme legislative power of the State is vested in the General Assembly; the provisions of our State Constitution are not a grant but a limitation of legislative power, so that the General Assembly may enact any law not expressly, or by clear implication, prohibited by the State or Federal Constitution; a statute will, if possible, be construed so as to render it valid; every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution.

Judged against this standard, S-109 if enacted into law, would in our view easily pass constitutional muster.

Based upon our research, it appears that a number of other states have already enacted statutory provisions similar to S-109. Florida's statute is virtually identical, as is that of Georgia. See, Florida Code, § 837.05; Georgia Code § 16-10-26. Alabama also has a similar statute, Code of Alabama, § 13A-10-9, which is based on the model Penal Code, § 241.5 and the Michigan Revised Criminal Code, § 4540. 1/ It is well recognized that

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1/ There are probably other similar statutes as well, as we have not attempted a systematic review of other states' statutes.

The Commentary to Alabama Code § 13A-10-9 is a good indication of the legislative intent of similar provisions:

> Section 13A-10-9 is based on model Penal Code § 241.5 and Mich.Rev.Crim. Code § 4540. This section requires that the defendant know that the report is false. Also, the defendants' culpable mental state must have been to knowingly cause the transmission of the false report to law enforcement authorities. Alabama did not have a similar law.

statutes such as proposed S-109 are

> designed to prevent the waste in time, energy and expense involved in having law enforcement officers run down false leads concerning criminal conduct and to protect private citizens from false accusations and resultant embarrassment, annoyance and aggravation.

67 C.J.S., Obstructing Justice, § 20.

Courts have consistently upheld similar statutes against constitutional attacks. For example, in State v. Hobbs, 90 N.J.Sup. 146, 216 A.2d 595 (1966), the New Jersey statute was challenged on constitutional grounds, particularly that of vagueness. The New Jersey statute, virtually identical to S-109, provided that "any person who knowingly and willfully gives false information or causes false information to be given to any law enforcement officer or agency with respect to the commission of any crime or purported crime is guilty of a misdemeanor." The New Jersey Supreme Court noted that the statute "was enacted to deter individuals from giving false information to law enforcement authorities." Clearly, said the Court, this legislative purpose was legitimate and the statute was "constitutional ... on its face." 216 A.2d at 598. As to the specific constitutional attack on the grounds of vagueness, the Court answered that the statute was sufficiently specific:

> These elements are specified with such a reasonable degree of certainty as sufficiently to apprise those to whom it is addressed of the standard of conduct proscribed therein so that men of intelligence need not necessarily guess at its meaning or differ as to its application.

Supra.

The First Amendment has also provided the mechanism for attack against similar statutes. Uniformly however, such challenges have failed.

By way of background, courts have consistently held that the First Amendment provides no protection for a knowing or reckless falsehood. D'Andreas v. Adams, 626 F.2d 469 (5th Cir. 1980). A knowingly false statement and false statements made with reckless disregard of the truth do not enjoy constitutional protection. Appletree v. City of Hartford, 535 F.Supp. 224 (D.Conn. 1983). While the First Amendment protects every idea because there is no such thing as a false idea or opinion, it does not protect knowingly false or misleading statements of fact. Loekle v. Hansen, 551 F.Supp. 74 (S.D.N.Y. 1982). The United States Supreme Court has recently reiterated that there is no constitutional value in false statements of fact. Keeton v. Hustler Magazine, 104 S.Ct. 1473 (1984). The Court has reasoned:

> Although honest utterance, even if inaccurate, may further the fruitful exercise of the right of free speech, it does not follow that the lie, knowingly and deliberately published about a public official, should enjoy a like immunity ... . Calculated falsehood falls into that class of utterances which "are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighted by the social interest in order and morality... ."

Garrison v. Louisiana, 379 U.S. 64, 75, 13 L.Ed.2d 125 (1964). See also, New York Times Co. v. Sullivan, 376 U.S. 254, 11 L.Ed.2d 686 (1964); Herbert v. Lando, 441 U.S. 153, 60 L.Ed.2d 115 (1979); Clipper Express v. Rocky Mtn. Motor Tariff Bureau, 690 F.2d 1240 (4th Cir. 1982); Bolling v. Baker, 671 S.W.2d 559 (Tex.App. 4th Dist. 1984).

Accordingly, where statutes similar in language or in purpose to S-109 have been challenged on First Amendment grounds, they have been uniformly upheld. For example, 49 U.S.C.S. § 1472, a federal statute which proscribes the conveying of false information to officials concerning aircraft piracy and

related crimes, 2/ has been the subject of First Amendment challenge in the federal courts. In United States v. Irving, 509 F.2d 1325, 1330 (5th Cir. 1975), cert. den., 423 U.S. 931, 46 L.Ed.2d 259 (1975), the Court, in rejecting plaintiff's First Amendment arguments, concluded:

> We have little difficulty in finding that the statute as construed is not over-broad and hence not unconstitutional on First Amendment grounds. It is aimed at a specific evil and is drawn to effectuate the legislative judgment that such speech must be suppressed.... The evil sought to be suppressed by Congress is of such gravity and the restriction on speech so slight as not to constitute an undue infringement upon protected expression. Mr. Justice Holmes classic example of the false shout of fire in a theatre ..., differs widely from speech which challenges widely held and deeply cherished beliefs, though both may cause serious disruption.... The present situation closely approximates the false cry of fire, and Congress was within its powers in choosing to make such speech criminal.

509 F.2d at 1330-1331. And, in Taylor v. United States, 358 F.Supp. 384 (S.D. Fla. 1973), the Florida Federal District Court upheld the same statute on similar grounds, noting: "In

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2/ 49 U.S.C.S. § 1472(m) provides in pertinent part:

> Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made to do any act which would be a crime prohibited by subsection (i), (j), (k), (l) of this section, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

scrutinizing a statute, its constitutional validity must be ascertained by balancing the interest of retaining the right to unfettered free speech with the right of society to protect itself from some evil arising out of totally unbridled verbal communication." 358 F.Supp. at 386.

Other cases addressing similar statutes, are in accord. In Gates v. City of Dallas, 729 F.2d 343 (5th Cir. 1984), the Court concluded that the Texas statute proscribing false reporting 3/ was constitutionally valid against any First Amendment attack. Concluded the Court,

> We reject the argument that mere exposure to criminal perjury or false report charges unconstitutionally inhibits conduct protected by the First Amendment. The Constitution affords necessary "breathing space" by protecting erroneous statements honestly made, but it does not protect knowingly false statements or statements made with reckless disregard of the truth. Garrison, 379 U.S. at 74-75, 85 S.Ct. at 215-16; New York Times, 376 U.S. at 278-84, 84 S.Ct. at 725-27. The statutes at issue here were obviously designed to discourage knowing falsehood and thereby to enhance the reliability of particular important statements such as those made ... in the form of unsworn reports to law enforcement officials.

3/ Texas Penal Code Ann. § 37.08(a) (Vernon 1974) provides:

> A person commits an offense if he:
> (1) reports to a peace officer an offense or incident within the officer's concern, knowing that offense or incident did not occur; or
> (2) makes a report to a peace officer relating to an offense or incident within the officer's concern knowing that he has no information relating to the offense or incident.

> Such a goal is clearly legitimate. The freedom of citizens ... is guarded by "breathing space" for honest misstatement; it is not infringed by a prohibition against knowingly false accusation. The prohibition of constitutionally unprotected knowing falsehoods is therefore not facially over-broad. See Broaderick v. Oklahoma, 413 U.S. 601, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973).

729 F.2d at 346. And in Appletree v. City of Hartford, supra, the Court upheld the Connecticut false reporting statute. Citing the Garrison and New York Times cases, the Court noted that the Connecticut statute only punished intentionally false statements and was therefore immune from any First Amendment attack.

Likewise, S-109 would only punish one who "knowingly gives false information" to a law enforcement officer. (Emphasis added.) In our judgment, by so limiting proscribed conduct, the statute is framed in such a way as to meet the constitutional tests set forth in the foregoing cases. 4/ Accordingly, we believe the proposed bill is constitutional.

With kindest regards, I am

Very truly yours,

T. Travis Medlock
Attorney General

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4/ S-109 prohibits anyone "knowingly giv[ing] false information to any law enforcement officer concerning the alleged commission of any crime." Alabama Code § 13A-10-9 in using similar language, intended to "require[ ] that the defendant know that the report is false." See, Commentary to § 13A-10-9. This, in our judgment, is also the logical reading of S-109. So read, we think the courts would uphold S-109 if enacted.