

1983 S.C. Op. Atty. Gen. 24 (S.C.A.G.), 1983 S.C. Op. Atty. Gen. No. 83-11, 1983 WL 142682

Office of the Attorney General

State of South Carolina

Opinion No. 83-11

April 7, 1983

*1 The Honorable Richard W. Riley

Governor

State of South Carolina

Post Office Box 11450

Columbia, South Carolina 29211

Dear Governor Riley:

You have asked for my advice as to the course of action you should take with respect to the enforcement of [§ 56-5-4070, Code of Laws of South Carolina](#) (1976 as amended) in light of the apparently conflicting provisions of a newly enacted federal law, §§ 411-412, P.L. 97-424. It is my opinion that you, as the Chief Magistrate of the State, should decline to enforce [§ 56-5-4070](#) to the extent that it is in conflict with P.L. 97-424. The reasons for this opinion are set out hereafter.

Generally, a statute enacted by the General Assembly is presumed constitutional. [University of South Carolina v. Mehlman](#), 245 S.C. 180, 139 S.E.2d 771 (1964). Where however, there is an apparent facial conflict between a state statute and a federal enactment, the presumption of constitutionality cannot stand. The constitutionality of the state statute must therefore be examined.

The federal law, P.L. 97-424, was apparently enacted pursuant to the Commerce Clause of the United States Constitution. [See](#), § 411, [supra](#). That section expressly provides, among other things, that 'no state shall prohibit commercial motor vehicle combinations consisting of a truck, tractor and two trailing units . . .'. § 411(c), [supra](#). The state statute, [§ 56-5-4070](#), [supra](#), provides on the other hand that '[n]o such combination of vehicles, coupled together, shall consist of more than two units . . .'. Thus, it would appear that [§ 56-5-4070](#) contravenes this unambiguous federal law. A further review of the two statutes reveals other apparent conflicts as well. Therefore, those provisions of [§ 56-5-4070](#) which conflict with P.L. 97-424 probably violate the Supremacy Clause of the United States Constitution and for that reason they would be deemed void. [Ray v. Atlantic Richfield](#), 435 U.S. 151, 158, 55 L.Ed.2d 179, 188 (1978). [South Carolina State Highway Department v. Barnwell Bros.](#), 303 U.S. 177, 187, 82 L.Ed.2d 734, 740 (1938).¹

Generally, a public officer, such as yourself, may not decline to enforce laws found on the statute books until the courts have declared such enactments unconstitutional. 67 C.J.S., [Officers](#), § 201; 16 Am.Jur. 2d, [Constitutional Law](#), § 199; 63 Am. Jur. 2d, [Public Officers and Employees](#), § 276. Moreover, the fact that the Governor of South Carolina possesses the constitutional duty to faithfully execute the laws, [Art. IV, § 15 of the Constitution of South Carolina](#), (1895 as amended), does not enable him to forbid the execution of any law which has not yet been determined to be unconstitutional. [Cf. Kendall v. United States](#), 37 U.S. (12 Pet.) 524 (1838). However, a governmental officer who takes an oath to uphold the United States Constitution may act on the ruling of the Attorney General as to the doubtful constitutionality of a particular statute, if the courts have not acted. 67 C.J.S., [Officers](#), § 201; [see also](#), 63 Am. Jur. 2d, [Public Officers and Employees](#), § 277; [O'Shields v. Caldwell](#), 207 S.C. 194, 219, 35 S.E.2d 184, 194 (1945). This is consistent with the federal case law that would permit a governmental official to be held personally liable in a suit for money damages if he violates a person's clearly established constitutional rights. [See](#), [Harlow v. Fitzgerald](#), 457 U.S. 800, 73 L.Ed.2d 396 (1982); [Schever v. Rhodes](#), 416 U.S. 232, 40 L.Ed. 2d 90 (1974); [Wood v. Strickland](#), 420 U.S. 308, 43 L.Ed. 2d 214 (1975). A court may deem such rights to be clearly established based upon the

above analysis. This provides further authority for you, as well as any South Carolina public official, to decline to enforce the state statute. O'Shields v. Caldwell, *supra*.

*2 Therefore, because § 56-5-4070 is apparently unconstitutional in light of the controlling federal law, I would advise that you may decline to enforce the state statute, insofar as it is in conflict with P.L. 97-424. This opinion would apply with equal force to all South Carolina public officials concerning the enforcement of this statute.

Sincerely,

T. Travis Medlock

Footnotes

- 1 This conclusion is not to be construed as a final opinion as to the constitutionality of the federal law, in light of the Tenth Amendment to the Constitution. This opinion does not address that issue. It assumes that the federal law is constitutional.

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