

1981 WL 157947 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 1, 1981

\*1 The Honorable Charles E. Henderson, Jr.  
Magistrate—Greenwood County  
County Courthouse  
Greenwood, South Carolina 29646

Dear Judge Henderson:

In a letter to this office you referenced a form rental agreement, a copy of which you forwarded, and questioned whether a lessee could be prosecuted pursuant to [§ 16-13-420, Code of Laws of South Carolina](#), 1976, if he fails to return rental items obtained as a result of entering into an agreement with a lessor under terms as specified in the form rental agreement. You particularly referenced the following language in the rental agreement: 'In the event renter at his sole election renews this rental agreement for successive one-week terms owner will transfer the property to renter.'

As you indicated in your letter, if the rental agreement is construed to be a lease-purchase agreement or conditional sales contract, prosecution pursuant to [§ 16-13-420](#) would not be possible. However, such section would permit prosecutions if the rental agreement were construed to establish a bailment with the privilege of purchase.

Upon reviewing the referenced rental agreement in full, it appears that such may be better described as providing for a bailment with privilege of purchase. As in other matters concerning contracts, intention of the parties as evidenced by the entire agreement is a primary consideration in construing a contractual matter such as the rental agreement. It is stated that as to a conditional sale, '... possession is delivered on an agreement to sell and buy, with title to the property to remain in the seller until payment of the price or performance of some condition specified, while in a bailment the bailee receives possession but not title to the goods for a particular purpose and usually on an agreement, express or implied, to redeliver them to the bailor after the purpose of the bailment has been fulfilled. A conditional sale imports an absolute obligation on the part of the purchaser to pay the purchase price, while a bailee may relieve himself of further liability by surrender of the property ...'

8 Am. Jur.2d, Bailments, § 39, p. 775.

The above referenced language is consistent with the following distinction between a bailment and a conditional sale:

'[t]he main distinction, or the most approved test, has been said to be that in a conditional sale there is a promise or agreement, to pay, while in a bailment there is no such promise or agreement, but the bailee may relieve himself of further liability by surrendering the property.' 8 C. J. S. Bailments, § 3(2), p. 328.

Referencing such general principles, and the rental agreement itself, it appears that a party to such an agreement who wilfully and fraudulently fails to return the property covered by such agreement may be prosecuted pursuant to [§ 16-13-420](#), *supra*. However, this determination is not made without any reservations inasmuch as without construction of the particular rental agreement by a court, an absolute determination cannot be made. I would only add that if the language quoted above, which concerns the transfer of the property to the renter after renewing for a specific number of weeks, were removed, there apparently would be no question that a prosecution could be initiated pursuant to [§ 16-13-420](#).

\*2 With best wishes,  
Sincerely,

Charles H. Richardson  
Assistant Attorney General

1981 WL 157947 (S.C.A.G.)

---

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.