

1981 S.C. Op. Atty. Gen. 111 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-86, 1981 WL 96612

Office of the Attorney General

State of South Carolina

Opinion No. 81-86

October 26, 1981

*1 The Honorable Richard W. Riley
Governor
Post Office Box 11450
Columbia, South Carolina 29211

Dear Governor Riley:

Your letter of October 14, 1981, inquires as to your authority to grant reprieves in other than death penalty cases.

[Article IV, Section 14, of the Constitution of this State](#), provides that:

‘The Governor shall have the power only to grant reprieves and to commute a sentence of death to that of life imprisonment. The granting of all other clemency shall be regulated and provided for by law.’

After thorough research, I find only one case in this State concerning directly the application of this constitutional provision, and there appear to be relatively few others in other jurisdictions throughout the United States. [State v. Harrison, 122 S.C. 523](#), was decided in 1922 and concerned the action by the Governor in granting a reprieve of the death penalty which had been imposed upon the defendant. The Supreme Court of this State affirmed the imposition of the death penalty and, taking note of the action taken by the Governor in granting the reprieve, stated:

‘—except to the extent affected by the reprieve granted by the Chief Executive, which was lawfully to postpone the execution of the sentence until 16 February 1923, at which time the sentence may be executed on 16 February 1923.’

The Supreme Court, moreover, added that the power to grant reprieves was granted by the Constitution; that there is no limitation upon the exercise of that power by the Constitution nor by statute; and that the courts do not have the power to inquire into the reasons which may have actuated the Governor in granting the reprieve.

Although the issue of the reprieve granted by the Governor was not directly in question in [Harrison](#), the statement by the Supreme Court is in accordance with the overwhelming weight of authority throughout this country. The Constitutions of 1868, 1895 and the current phraseology of the present constitutional provision relating to the Governor's authority to grant reprieves has remained substantially the same, and the Journals of the proceedings of those Conventions reflect no discussion or comments regarding the incorporation into the documents of a common law-derived Sovereign power.

In my opinion, this common law power is the source to which one must look to ascertain the meaning of the power of reprieve granted today to the Governor of this State.

At common law, the Sovereign possessed power to reprieve only in capital cases, and this is the restriction upon that power given today by the few cases which have passed upon it and which are set forth at the foot of this letter. [See](#) Vol. 1, CHITTY ON CRIMINAL LAW, at 757.

Moreover, the only statutory reference to the grant of reprieve power is found in [Section 17-25-370, Code](#) of Laws, 1976, which does not alter, but merely refers to, the grant of the power, but which, at least impliedly, affirm that the power to grant reprieves exists only in capital cases.

*2 Consequently, it is my opinion that you, as Governor, have the authority to grant reprieves only in capital cases and that such action by you will not be subject to question by the courts.

For convenience, the following definitions of commutation of sentences appear appropriate:

A 'reprieve' is a suspension or postponement of an execution of a sentence to a day certain, and it cannot defeat the ultimate execution of the judgment and sentence of the court but merely temporarily suspends its execution.

A 'commutation' is the changing of punishment assessed to a lesser punishment.

As noted, your power with respect to this authority is limited to capital cases.

Very truly yours,

Daniel R. McLeod
Attorney General

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