

1981 WL 158085 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 23, 1981

***1 Re: §§ 52-3-30 and 53-1-10**

The Honorable Michael R. Daniel
Speaker Pro Tempore
House of Representatives
810 Petty Street
Gaffney, South Carolina

The Honorable Ray Godshall
City Attorney
Post Office Box 66
Gaffney, South Carolina 29340

Gentlemen:

You have inquired of this office whether [§ 52-3-30, Code of Laws of South Carolina](#), as amended, is constitutional. The proscriptive aspects of § 53-3-30 are similar in many ways to its companion statute, § 53-1-10 of the amended Code. This latter section has been continuously upheld by the State Supreme Court when challenged upon various constitutional attacks, including those based upon the First and Fourteenth Amendments of the United States Constitution, and the equal protection clause of the South Carolina Constitution. See, [State v. Solomon](#), 245 S.C. 550, 141 S.E.2d 818, App. Dismissed 382 U.S. 204; [State v. Smith](#), 271 S.C. 317, 247 S.E.2d 331; [Carolina Amusement Company v. Martin](#), 236 S.C. 558, 115 S.E.2d 273. For the reasons articulated by the Court in these cases, [§ 52-3-30](#) must be deemed constitutional as well.¹

In addition, you have inquired as to whether private roller-skating activity conducted on Sunday between the hours of 7:00 and 9:00 P.M. is violative of [§§ 52-3-30 and 53-1-10](#). The Court in [State v. Galloway](#), 240 S.C. 136, 124 S.E.2d 910, construed the predecessor provision to [§ 53-1-10](#) to be applicable only to 'public sports'. The Court noted, at 139:

A public sport may be defined in general as one given for the entertainment and pleasure of the public and to which the public, or some portion thereof, is invited. 73 C.J.S. 'Public' 279.

In [Galloway](#) the Court considered whether a motor cycle race in which members of the public were invited, though no admission fee was charged, was public. The Court noted that the payment of admission fee is evidence of the public character but was not conclusive upon that point. The Court affirmed the lower court's decision and finding that the motor cycle race was public. The Court further noted that the section in question did not prohibit a 'private sport engaged in solely for the entertainment or pleasure of those who participate therein.' See, [Palmetto Golf Club v. Robinson](#), 143 S.C. 347, 141 S.E. 610.

Accordingly, it is the opinion of this office that [§ 52-3-30](#) is constitutional, and that [§§ 53-3-30 and 53-1-10](#) do not prohibit a private sport engaged in solely for the entertainment and pleasure of those who participate therein.

With best wishes for the holiday season, I remain

Very truly yours,

Edwin E. Evans

Assistant Attorney General

Footnotes

- 1 Act 573 of 1976 Acts and Joint Resolutions of the General Assembly amended [§ 52-3-30](#) by making it applicable state wide. The presently constituted [§ 52-3-30](#) presents no conflict with Article III, § 34 of the South Carolina Constitution 1895 as amended, in that it is a general law and applies in like manner throughout the entire state.

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