

1980 WL 121122 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 25, 1980

***1 RE: [S.C. Code, § 16-17-430 \(1976\)](#)**

The Honorable William L. Ferguson
Solicitor
Sixteenth Judicial Circuit
P. O. Box 726
York, South Carolina 29745

Dear Red:

You have directed to this office an inquiry concerning applicability of the above-captioned statute to a case which you have been called upon to prosecute for unlawful telephonic communications. It is our understanding that the facts of the case involve an angry conversation between a debtor and his creditor's attorney, who was seeking to collect in a law suit certain monies due the creditor on a promissory note executed by the debtor. The debtor had telephoned the creditor's attorney, and, during the ensuing angry conversation, the lawyer referred to the debtor as 'a mother fucking pig', 'mother fucker', and a 'son-of-a-bitch'.

You wish to know whether the above conversation could be an unlawful telephonic communication under [§ 16-17-430](#), which provides, in pertinent part, as follows:

It shall be unlawful for any person anonymously or otherwise: (1) to use in any telephonic communication any words or language of a profane, vulgar, lewd, lascivious, or an indecent nature or to threaten in any telephonic communication any unlawful act with the intent to coerce, intimidate, or harass another person, or to communicate or convey by telephone an obscene, vulgar, indecent, profane, suggestive, or immoral message to another person; . . .

It is the opinion of this office that the above portion of the statute proscribes only language and conduct which is 'obscene'. See [State v. Thompkins](#), 263 S.C. 472, 211 S.E.2d 549 (1975); [State v. Watkins](#), 262 S.C. 178, 203 S.E.2d 429 (1973). There is no question but that a broader construction of the statute would give rise to serious constitutional problems under the First and Fourteenth Amendments to the United States Constitution. [Walker v. Dillard](#), 523 F.2d 3 (4th Cir. 1975), cert.den. 423 U.S. 906, 46 L.Ed.2d 136, 96 S.Ct. 208; [Radford v. Webb](#), 446 F.Supp. 608 (W.D.N.C. 1978), Aff'd. 596 F.2d 1205 (4th Cir. 1979).

It is also the opinion of this office that the use of the above-mentioned language, which is admittedly 'vulgar', is not 'obscene' under the cited statute when it arises out of a consensual conversation of an angry or argumentative nature between two adult individuals. In [Cohen v. California](#), 403 U.S. 15, 29 L.Ed.2d 284, 91 S.Ct. 1780 (1971), the United States Supreme Court held that although the message on the back of Paul Robert Cohen's jacket ('fuck the draft') was unquestionably vulgar, it was protected speech under the First and Fourteenth Amendments to the United States Constitution because it amounted to neither obscenity nor fighting words. Consequently, under the above-cited facts, a prosecution under [§ 16-17-430](#) will not lie.

It should be noted, parenthetically, that this informal opinion does not purport to condone such conduct by an attorney as being proper or professional.

***2** If you have any questions, comments, or need of further information, please do not hesitate to contact the undersigned at this office.

Thank you.

Very truly yours,

Lindy P. Funkhouser
Assistant Attorney General

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