

1980 WL 121192 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 23, 1980

**\*1 Re: Responsibility of the Principal of a Corporation to Report Embezzlement**

Honorable James C. Anders  
Solicitor  
Fifth Judicial Circuit  
Richland County Courthouse  
Columbia, South Carolina 29201

Dear Solicitor Anders:

You have asked this Office for an Opinion regarding the legal responsibility of the principal of a corporation to report embezzlement to the authorities if the embezzler agrees to make restitution. It appears that while the principal in question may be under a duty or obligation to come forward with evidence of criminal conduct, his failure to do so is not in and of itself criminal.

Concealment of crime has been condemned throughout our legal history and each and every citizen is under a duty to report criminal activity to the authorities, Roberts v. United States, Opinion No. 78-1793, 27 CrL. 3027 (U.S. April 15, 1980). Not only is this duty imposed upon each citizen but certain omissions to report crimes are considered to be criminal.

For instance, criminal neglect either to prevent a felony from being committed or to bring the offender to justice after its commission is embodied in this State as the offense of misprision of a felony, State v. Carson, Opinion No. 21153 (S.C. February 19, 1980). However, that offense is not committed by mere silence or failure to come forward; there must be some positive act of concealment of the felony, State v. Carson, supra. It should be remembered that if the individual has not only concealed the felony but also acted in concert with or given subsequent assistance to the offender, the concealer may be guilty of accessory before or after the fact.

Further, at common law, the suppression, destruction or falsification of evidence was considered obstruction of justice, 67 CJS, Obstructing Justice, § 15 at 147. However, note again the requirement of some positive act on the part of the concealer to make him criminally liable.

Last, consider that should the principal of a corporation, on the condition of the alleged embezzler's making restitution, receipt of a reward not to prosecute, or agreement to show the embezzler favor in a prosecution, might be said to have committed the offense of compounding a felony, likewise criminal activity proscribed at common law, 15A CJS, Compounding Offenses, § 2(1) at 159. There must exist an agreement or understanding to conceal the crime or to abstain from the prosecution thereof so that the mere retaking of one's own goods which have been stolen or the receiving back of embezzled funds does not compound the crime unless there has been some agreement to shield the thief, 15A, CJS, supra at 162.

A common thread throughout all of the above is the understanding that the principal of the corporation in question must have acted, in whichever manner, with the requisite criminal intent. If the principal in question has acted merely to regain for his corporation that which is rightfully that of the corporation and with no improper motive he cannot be said to be guilty of any offense.

\*2 Therefore, it is the Opinion of this Office, that under certain circumstances the principal of a corporation may be criminally liable for failing to report embezzlement to the authorities upon restitution by the alleged embezzler. However, in no event is the principal liable if he does not have the requisite intent to commit the criminal act.

Sincerely,

Scott Elliott  
State Attorney

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