1980 WL 121257 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 4, 1980

***1** Honorable Joyce C. Hearn
Member
House of Representatives
District No. 76, Richland County
1316 Berkeley Road
Columbia, South Carolina 29205

Dear Mrs. Hearn:
Your letter requesting an opinion as to the constitutionality of House Bill 3176 has been referred to me for reply. It is my understanding that a question has arisen concerning the categorization of a threat to sabotage or damage a nuclear facility with the crimes of actual sabotage or attempts to sabotage, punishable by a term of forty (40) years imprisonment with no possibility of parole. Also, I understand that the terms of imprisonment for the various sections, creating mandatory sentences of-various periods, have been challenged as being unconstitutionally excessive.

It is my observation that there is indeed precedent for legislating a 'threat' as a separate and independent offense, as has been done in this statute. 31 Am. Jur. 2d Extortion, Blackmail, etc., Sections 14-17; see also State v. Cashman, (Supreme Judicial Court of Maine), 217 A. 2d 28. The term 'threat' is generally seen in context of compelling, by malicious threats, a person to do or refrain from doing any act, against his will, whether such threats are conveyed by verbal or by written or printed communications. Such constitutes a form of extortion or blackmail, without the required element of an intent to extort money, property or other pecuniary advantage. Whether the words used constitute such a threat depends largely upon the context, inasmuch as words which in one context might be harmless and innocuous may become a threat or menace in another. It is only the latter which would be covered by the statute. Of particular note, actual present ability to carry out a threat is not necessarily an element of the crime.

Concerning the mandatory terms of imprisonment, it is my observation that they are indeed severe, but defendable as not constituting cruel and unusual punishment in violation of the United States Constitution or the South Carolina Constitution. Case law is generally uniform that it is the power of the Legislature to determine proper penalties for the commission of acts made criminal. State v. Haulcomb, 260 S.C. 260, 195 S.E. 2d 601, appeal dismissed 414 U.S. 886 (1973). 'The severity of punishment compared to other crimes can be explained by the degree to which the Legislature has deplored this crime.' Vacendak v. State, 264 Ind. 101, 304 N.E. 2d 352, cert. den. 429 U.S. 851 (1976). See in general, cases cited in 33 A.L.R. 3d 335 (1935), Sections 4 and 7, 1 Am. Jur. 2d Section 34, page 185. Such legislated sentences would, of course, reflect the will of the Legislature to deplore these acts to this extent. However, I believe that such sentences would receive intense scrutiny in both the State and Federal Courts.

I trust this information will be of assistance to you. If you have any further questions, please do not hesitate to contact me.
Respectfully,

***2** Brian P. Gibbes
Assistant Division Director
Criminal Division

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