

1978 WL 35072 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 9, 1978

*1 Ms. Verna Mixson
Allendale Police Department
City Hall
Allendale, South Carolina 29810

Dear Ms. Mixson:

You have inquired as to what the requirements for commission of the offense of “resisting arrest” are. In an opinion by this office in 1970 Senior Assistant Attorney General John P. Wilson stated:

The offenses of resisting arrest, obstructing justice, and escape from custody were all crimes at common law and are thus punishable in the state though never created by statute. See [State v. Hollman, 232 S.C. 489, 102 S.E.2d 873 \(1958\)](#). One who flees from an officer before being stopped and confronted with appropriate words of arrest is not guilty of either resisting arrest or escape from custody. On the other hand, one who has been stopped and confronted with appropriate words of arrest and then jerks away from the officer and flees would be guilty of resisting arrest and also escape from custody if the officer had touched him with the manifest purpose of apprehending him. Perkins on Criminal Law, 1957, pp. 424-418.

One who at least initially submits to an officer's custody but then later attempts to escape should be charged with escape from lawful custody rather than resisting arrest. It should be noted that one who strikes or offers force against a police officer attempting to make a lawful arrest has committed an assault or assault and battery of a high and aggravated nature and could be so charged.

1969-70 Ops. Atty. Gen. at 80.

I hope this answers the question you raised. If I can be of further assistance, please feel free to call on me.

Sincerely yours,

Richard P. Wilson
Assistant Attorney General

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