

1990 S.C. Op. Atty. Gen. 175 (S.C.A.G.), 1990 S.C. Op. Atty. Gen. No. 90-61, 1990 WL 482448

Office of the Attorney General

State of South Carolina

Opinion No. 90-61

October 17, 1990

*1 Michael V. Woodall, Ph.D.
Superintendent
Lexington District Two School
715 Ninth Street
West Columbia, South Carolina 29169

Dear Dr. Woodall:

In a letter to this Office you questioned whether Section 16-17-420 of the Code can be applied on a twelve month a year, twenty-four hour basis. Such provision states:

It shall be unlawful:

(1) For any person wilfully or unnecessarily (a) to interfere with or to disturb in any way or in any place the students or teachers of any school or college in this State, (b) to loiter about such school or college premises or (c) to act in an obnoxious manner thereon; or

(2) For any person to (a) enter upon any such school or college premises or (b) loiter around the premises, except on business, without the permission of the principal or president in charge.

A criminal penalty of a fine of not less than one hundred dollars nor more than one thousand dollars or a term of imprisonment of not less than thirty days nor more than ninety days is provided.

You stated that one of your middle schools is situated in an unsavory neighborhood, commonly referred to as "Crack Alley", and individuals sometimes gather at the school on weekends, during the summer, and early morning hours. In light of such circumstances you have questioned whether Section 16-17-420 can be enforced regardless of whether a school is in session.

In *People In Interest of C.M.*, 630 P.2d 593 (Col.1981) the Colorado Supreme Court construed a statute which established a criminal offense if an individual

Loiters in or about a school building or grounds, not having any reason or relationship involving custody of, or responsibility for, a pupil or any other specific, legitimate reason for being there, and not having written permission from a school administrator.

The Court in holding such statute to be unconstitutionally vague on due process grounds noted that the statute ... neither requires a demonstrable causality between the conduct and the impairment of school functions nor does it even require that the conduct occur while school is in session.

630 P.2d at 596.

On its face, Section 16-17-420 makes no reference to the time period for enforcement. Moreover, I am unaware of any prior opinion of this Office or decision by a court in this State construing such provision in such regard. The prohibitions against interfering with or disturbing students or teachers and acting in an obnoxious manner appear to be applicable only when a school is in session or otherwise open. However, the statute further prohibits "loitering about" or entering school or college premises, except on business, without permission of the principal or president in charge. No express limitations on the time of applicability of such prohibition are set forth. Of course, such prohibitions should not be construed in a manner inconsistent with legitimate First Amendment privileges. Also, for purposes of this opinion, the provision is not being construed on constitutional grounds. See, e.g., 50 A.L.R.3d 340-382 where similar statutes have been reviewed on a variety of constitutional bases.

*2 As to your specific question of whether Section 16-17-420 can be applied on a twelve month a year twenty-four hour basis, it is my conclusion that there is no restriction in such regard. Therefore, such provision could be enforced regardless of whether school is in session. Of course, while this Office must presume the constitutionality of Section 16-17-420, any final determination as to constitutionality is a matter for the courts. See: Opin. of the Atty. Gen. dated March 23, 1990. Therefore, as to any questions regarding constitutionality you may wish to consult with your school attorney. Sincerely,

Charles H. Richardson
Assistant Attorney General

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