

1979 WL 43440 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 29, 1979

***1 SUBJECT: Law of Trespass**

(1) The owner of industrial property may not be able to utilize the provisions of [Section 16-11-610](#) and [50-1-90, Code of Laws of South Carolina \(1976\)](#) to prosecute trespassers on his property.

(2) The aforementioned statutes cannot be used so as to prohibit trespassing for purposes other than those specified therein.

(3) There are other statutory provisions which may be utilized for the offense of trespass.

Honorable Lloyd I. Hendricks
House of Representatives

QUESTIONS:

1. May the owner of industrial property utilize the provisions of [Section 16-11-610](#), as amended, to prosecute trespassers on his property after they have been asked to leave and the property is posted?
2. May this law be utilized so as to prohibit trespassing for purposes other than those specified?
3. Is there any other method of prosecution for trespassing other than through [Sections 16-11-610](#) and [50-1-90](#)?

STATUTES AND CASES:

South Carolina Code of Laws (1976), §§ [16-11-600](#), [16-11-610](#), [16-11-620](#), [16-11-640](#), [50-1-90](#).

[State v. Mays](#), 24 S.C. 190 190 (1886); [State v. Terry](#), 58 S.C. 215 36 S.E. 555 (1900); [Charleston v. Mitchell](#), 239 S.C. 376, 123 S.E. 2d 512 (1961).

DISCUSSION:

1. [Section 16-11-610, Code of Laws of South Carolina \(1976\)](#), as amended, provides that a person who trespasses upon the lands of another for the purposes enumerated therein will be guilty of a misdemeanor, punishable as provided. The new amendments have increased the penalty with respect to fines from twenty dollars to two hundred dollars, and established increasing penalties for each subsequent offense. Unless a person enters the land of another for the purposes enumerated within the statute, there is no trespass under [Section 16-11-610](#). Therefore, in order for the owner of industrial property to utilize the statute, it would have to be established that a person entered upon the lands to do one or more of the following: hunting, fishing, trapping, netting; gathering fruit, wild flowers; cultivate flowers, shrubbery, straw, turf, vegetables or herbs; or cutting timber of such land. This is the limit of the scope of the statute.

2. Consequently, [Section 16-11-610](#), may not be utilized to cover any other method or purpose of trespass. Whether or not an owner of industrial property could make use of the statute depends upon the circumstances of the case. It is postulated that whatever the circumstances, they must fall within the requirements of the statute in order for [Section 16-11-610](#) to be applicable. This disposes of the first two issues.

3. With respect to the final issue, if an owner of industrial property is unable to bring his case within the purview of [Section 16-11-610](#), he or she may want to review various other statutory provisions which may be more applicable to the situation. [Section 16-11-610](#), [Code of Laws of South Carolina \(1976\)](#), is one such statute. Under the statute,

*2 ‘any entry upon the lands of another, after notice from the owner or tenant prohibiting such entry, shall be a misdemeanor and be punished by a fine not to exceed one hundred dollars, or by imprisonment with hard labor on the public works of the county for not exceeding thirty days. When any owner or tenant of any lands shall post a notice in four conspicuous places on the borders of such land prohibiting entry thereon, a proof of the posting shall be deemed and taken as notice conclusive against the person making entry, as aforesaid, for the purpose of trespassing.’

Pertaining to the issue of notice, an affidavit must show plainly that the offense charged is entry upon lands with notice, and not mere trespass upon them. [State v. Mays, 24 S.C. 190 \(1886\)](#). An affidavit alleging trespass after notice is sufficient. [State v. Terry, 58 S.C. 215 36 S.E. 555 \(1900\)](#). One who remains after being directed to leave is guilty of a wrongful entry. [Charleston v. Mitchell, 239 S.C. 376, 123 S.E. 2d 512 \(1961\)](#), reversed on other grounds in [378 U.S. 551, 84 S. Ct. 1901, 12 L Ed 2d 1033 \(1967\)](#).

Two additional statutes may be applicable to the case at bar. [Sections 16-11-620](#) and [16-11-640](#) pertain to trespasses upon privately owned property. Under [Section 16-11-620](#),

‘any person who, without legal cause or good excuse, enters into the dwelling house, place of business or on the premises of another person after having been warned within six months proceeding not to do so or any person who, having entered into the dwelling house, place of business or on the premises of another person without having been warned within six months not to do so, fail and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than one hundred dollars or be imprisoned for not more than thirty days.’

[Section 16-11-640](#) additionally states that

‘It is unlawful for anyone not an occupant, owner or invitee to enter any private property enclosed by walls or fences with closed gates between the hours of six p.m. and six a.m. The provision does not apply to justifiable emergencies, or to premises which are not posted with clearly visible signs prohibiting trespass upon the enclosed premises. Punishment for violation of this section is a fine of not less than twenty-five dollars nor more than two hundred dollars or imprisonment for not more than thirty days.’

[Section 50-1-90, Code of Laws of South Carolina \(1976\)](#) has little application to trespass upon industrial property, unless such trespass was for the purpose of hunting or ranging on the land. Therefore, an in depth discussion of the section is not required.

CONCLUSION:

1. and 2. [Section 16-11-610 of the Code of Laws](#) may be applicable to a trespass upon industrial property, but only if the trespass is conducted within the narrow parameters of the statute. Given the fact that [Sections 16-11-620](#) and [16-11-640](#) encompass a broader scope of trespassory conduct, such statutory provisions may be more applicable.

*3 3. There are various other statutory provisions which pertain to trespass upon public and private property. Such statutes are classified according to subject matter. (i.e. trespass to park property; trespass of state correctional property; trespass to schools). It is not essential for the purposes of the issues as presented to analyze every statute as it pertains to trespass, as the remaining statute largely pertain to public property. If a trespassory violation under [Sections 16-11-610 et seq., Code of Laws of South Carolina](#) (1976) cannot be found, and the case cannot be filed under [Section 50-1-90](#) at the State Code of Laws, then in all probability there is no violation.

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