

1978 S.C. Op. Atty. Gen. 80 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-54, 1978 WL 22536

Office of the Attorney General

State of South Carolina

Opinion No. 78-54

March 21, 1978

*1 Mr. Neal Forney

Assistant Director

South Carolina Court Administration

Post Office Box 11788

Columbia, SC 29211

Dear Mr. Forney:

You have requested our opinion as to whether there is a statutory or a common law crime committed by one who can be identified who uses obscene or profane language on a citizen band radio.

Generally, radio communications are governed by federal law, which provides that one who ‘utters any obscene, indecent, or profane language by means of radio communication shall be fined not more than \$10,000 or imprisoned not more than two years, or both.’ [18 U.S.C. Section 1464](#). That section has been construed to apply to all citizen band radio communication even when not proven to have crossed state lines. [Gagliardo v. United States, 366 F.2d 720 \(9th Cir. 1966\)](#). Clearly, the use of profane or obscene language over a citizen band radio is proscribed by federal law and subject to federal enforcement.

It should also be noted that where federal and state law purport to proscribe the same conduct, the federal law will prevail.

Regarding possible state jurisdiction and enforcement in such situations, our research discloses no specific provisions of state law proscribing such conduct. However, a general prohibition against the use of obscene or profane language on any highway is contained in Section 16-17-530. The applicability of that section, however, is somewhat doubtful inasmuch as that statute appears to be directed to situations in which one is loud, boisterous, and behaving in public in a disorderly manner. Whether the conduct you describe would fall within that proscribed by the preceding section would depend upon the particular facts of each case.

Breaches of the peace, furthermore, also appear to be of doubtful applicability to these situations. ‘Unless so provided by statute, abusive and insulting language will not constitute a breach of the peace, where there is no threat of, or incitement to, immediate violence.’ 11 C.J.S., [Breach of the Peace](#), Section 3.

I trust the preceding discussion adequately answers your question, however, if any further assistance is required, please feel free to contact me.

With best regards, I am

Very truly yours,

Richard P. Wilson

Assistant Attorney General

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