

1978 WL 207594 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 19, 1978

*1 Chief J. L. Altman, Jr.
Police Department
City of Beaufort
P.O. Box 889
Beaufort, South Carolina 29902

Dear Chief Altman:

You have asked whether a knife, other than a dirk, may qualify as a “deadly weapon” under [Section 16-23-460 of the 1976 Code of Laws of South Carolina](#), and if not, whether a city may enact an ordinance prohibiting persons from carrying a concealed knife with a blade longer than two and one-half inches.

Our research reveals no pertinent South Carolina law defining “dirk” and “other deadly weapon” as the terms are used in [Section 16-23-460](#); however, there is authority from other states.

Generally, a “dirk” is a dagger or a straight knife primarily fitted for stabbing. See 12A [Words and Phrases, Dirk](#); [People v. Syed Shah](#), 205 P.2d 1081, 1083; [People v. Ruiz](#), 263 P. 836, 837. There is additional case law which interprets the word as meaning a knife primarily designed as a weapon, as opposed to a knife which could be perverted to a dangerous use. See [People v. Cricuoli](#), 141 N.Y.S. 855, 857. Accordingly, as the California court held in [People v. Forrest](#), 432 P.2d 374, an oversized pocket knife, not primarily designed for stabbing, was not a dirk, since the knife folded like a pocket knife and the blade when opened did not lock into place. Therefore, it is our opinion that when a knife, such as a pocket knife, has many uses, some of which are clearly innocent and utilitarian, and also has a characteristic which would substantially limit its effectiveness as a stabbing instrument, it cannot be held to be a weapon primarily fitted for stabbing. A switchblade knife, however, with a blade that locks into place when opened, clearly would fall into the definition of a straight knife primarily designed as a weapon and therefore would be a dirk within the meaning of [Section 16-23-460](#).

As to whether other knives might properly fall under the provision of [Section 16-23-460](#) for “other deadly weapons”, a dangerous or deadly weapon has been defined “as any instrument which, when used in the ordinary manner contemplated by its design and construction, will, or is likely to, cause death or great bodily harm.” 79 [Am.Jur.2d, Weapons and Firearms, Section 1](#). The question of whether a knife is a deadly or dangerous weapon within the contemplation of the statute regulating the carrying of such weapons, is frequently governed by the circumstances of the individual case, and may present a mixed question of law and fact.” [Id.](#), Section 2. Therefore, it appears that a knife may be a deadly weapon if it is primarily designed for stabbing or if, in its ordinary use contemplated by its design, will cause death or great bodily harm. This definition would, however, exclude most folding pocket knives and other such knives under ordinary circumstances. Nevertheless, whether the concealed possession of such knives would fall under the proscription of [Section 16-23-460](#) would depend upon the particular circumstances prevailing at the time. Therefore, no precise answer to your question can be given at this time.

*2 You have also asked whether the City may pass an ordinance making it unlawful to carry a concealed knife with a blade longer than two and one-half inches. [Section 5-7-30 of the 1976 Code of Laws of South Carolina](#) gives municipalities the power to enact ordinances “not inconsistent with the Constitution and the general law of this State.” Generally, a municipal ordinance which adds to, subtracts from, modifies, limits, or amends a state law may be said to conflict with state law. However, the fact that an ordinance enlarges upon the provisions of a statute by requiring more

restrictions than required by the statute creates no conflict unless the statute limits the requirements for all cases to its own proscription. 5 McQuillin, Municipal Corporations, Section 15.22. Accordingly, whether a municipal ordinance would run afoul of the foregoing rules would depend upon the particular terms of that ordinance. Therefore, an answer to your question is not possible at this time without a review of the particular ordinance you propose. Your city attorney should be able to assist you in drafting a suitable ordinance if possible.

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

Very truly yours,

Richard P. Wilson
Assistant Attorney General

Approved by:

(Illegible Signature)

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