

1978 WL 34606 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 20, 1978

**\*1 RE: [Section 27-39-250 of the South Carolina Code](#)**

Honorable Leo J. Zolnierowicz  
1213 Hillside Drive  
Hanahan, S. C. 29406

Dear Judge Zolnierowicz:

In your letter of May 24, 1978 to this Office you indicate that the manager of an apartment complex in your jurisdiction is attempting to recover by distress the unpaid rent of a tenant who has absconded, leaving on the premises certain leased furniture owned by C & S Leasing Company. The manager is of the opinion that since the tenant left no other property and the furniture is not excluded by [Section 27-39-230](#) or 27-30-260 of the South Carolina Code, that the leased furniture would be subject to distress.

[Section 27-39-210, Code of Laws of South Carolina](#), 1976, permits a landlord to distrain on the personal property of a tenant for the collection of rent due. The Supreme Court of South Carolina has repeatedly held however that:

The right of a landlord to distrain is subject to the following conditions: (1) distress must be for rent only; (2) when the relation of landlord and tenant exists; (3) when the rent reserved is certain; (4) when the rent is in arrears; and (5) when the property belongs to the tenant in his own right. [Fraday v. Smith](#), 247 S.C. 353, 147 S.E.2d 412 (1966). (Emphasis added)

As to your specific situation as outlined above, please be advised that inasmuch as the property on the leased premises is leased, a fact known to you, in light of the provisions of [Section 27-39-250, Code of Laws of South Carolina](#), 1976 it would be inappropriate to distrain any of the leased property which is in fact the property of the C & S Leasing Company.

With best wishes, I am

Very truly yours,

Charles H. Richardson  
Assistant Attorney General

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