1978 WL 35058 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 24, 1978

***1** Sidney S. Riggs, III
Asst. Solicitor
Eleventh Judicial Circuit
Lexington County Courthouse
Lexington, South Carolina 29072

Dear Sidney:
Your request for an opinion concerning the South Carolina Private Detective Act was referred to me for answering.

The first two questions essentially inquire as to the consequences which would befall an individual operating a private detective business without a license.

There are numerous procedures available for enforcement of license requirements all of which must satisfy the due process requirement; among other procedures, statutes may expressly provide that carrying on specific activities without a required license is a criminal offense. 51 Am Jur 2d Licenses and Permits § 70 and 72.

The parts of the Code pertinent to your questions are:
'. . . any person or corporation desiring to carry on a detective business in this State shall make a verified application in writing to the Division for a license therefor.' S. C. Code § 40-17-50 (1976)

and in Section 40-17-170:
'Any person violating the provisions of this chapter shall be deemed guilty of a misdemeanor and upon conviction, shall be fined . . . or imprisoned . . . not to exceed one year or both.'

From the language set forth above it is clear the statute requires one who would conduct business as a private detective to 'make application' for a license.

It is the opinion of this office, therefore, where the business is undertaken without having 'made application' a criminal violation has occurred.

The second issue you raise is whether the statutory requirement is satisfied simply by making application for a license regardless of whether or not the license is ever issued.

Where a statute makes criminal certain acts of omission or commission the statute is penal in nature. 3 Sutherland Statutory Construction § 59.02 (4th ed.) The general rule in South Carolina concerning interpretation of criminal statutes is that criminal statutes must be construed strictly against the State and in favor of the defendant. Bouie v. City of Columbia 84 S Ct 1697, 378 US 347, 12 L Ed 2d 894; Lewis v. Gaddy 254 SC 66, 173 SE 2d 376 (1970); State v. McCord 258 SC 163, 187 SE 2d 654 (1972).

Though the intent of the legislature is clearly to require a license in order to conduct business as a private detective, the statute has no express provision prohibiting operation without one. Section 40-17-170 provides penalties for 'any person violating the provisions of this chapter . . .' (emphasis added) and a strict interpretation would necessarily have to hold against expanding the section to include that which is implied rather than expressed. See Bouie supra. holding South Carolina trespass statute which prohibited entry after a notice prohibiting such entry did not encompass the different act of remaining on the premises after receiving notice to leave.

***2** There is authority which modifies the strict construction rule holding the proper method of interpreting a penal statute would be to find and put into effect the intention of the legislature as gathered from a reasonable interpretation of the words of the statute. See State v. Firemen's Insurance Co. 164 SC 313, 162 SE 334 (1931) imposing a financial penalty upon an insurance company for doing business with an unlicensed agent in the State such conduct not being expressly prohibited. State v. Johnson 196 SC 497, 14 SE 2d 24 (1941) and Carolina Amusement Co. v. Martin 236 SC 558, 115 SE 2d 273 (1960) construing the word 'plays' in the Sunday Closing Laws to include moving pictures, but the greatest amount of authority, South Carolina included, subscribes to the rule of strict construction. See generally cases cited in West's Digests Statutes key No. 241(1).

It is the opinion of this office absent a violation of an express provision of the Act there is no criminal violation.

Regarding your last questions generally, the offense of obtaining money by false pretenses occurs where there has been: a) a false representation of a past or existing fact made by the accused, b) with intent to deceive and defraud, and c) there is a reliance thereon with d) an actual defrauding without compensation. 35 CJS False Pretenses § 6, State v. Wallace 25 NC App 360, 213 SE 2d 420 (1975). South Carolina cases have not specifically enumerated all of the above but do find 'intent' to be an essential element. State v. Hicks 77 SC 289, 57 SE 842 (1907); Turner v. Montgomery Ward & Co. 165 SC 253, 163 SE 796 (1932). The gravamen of the offense is in the making of the false pretense with intent to defraud and thereby obtaining another's property. So it is not essential that the victim suffer a permanent loss or that he sustain pecuniary loss. The offense is complete when money or property has been obtained by false representations and it cannot be purged by subsequent restoration or repayment. 32 Am Jur 2d False Pretenses § 38 at page 200.

It is immaterial whether whatever the victim got in return is equal in value to that with which he parted. U.S. v. Rowe 56 F 2d 747 (2d Cir 1932); State v. Mills 96 Ariz 377, 396 P 2d 5 (1964).

You can see then where an individual falsely represented himself as a licensed private detective and did so with intent to deceive and defraud and the victim paid money relying on that representation, the necessary elements are present.

It is the opinion of this office, given the necessary elements above, the individual making the representation would be guilty of obtaining money by false pretenses.

I trust this will answer your questions sufficiently. In any case, please advise how I may be of further assistance.
Very truly yours,

Buford S. Mabry, Jr.
Assistant Attorney General

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