

1976 S.C. Op. Atty. Gen. 361 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4504, 1976 WL 23121

Office of the Attorney General

State of South Carolina

Opinion No. 4504

October 26, 1976

***1 THE BUREAU OF NARCOTIC AND DRUG CONTROL OF THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL IS A LAW ENFORCEMENT AGENCY UNDER SECTION 17-4 OF THE CODE OF LAW OF SOUTH CAROLINA, 1962, AS AMENDED, AND IS THUS SUBJECT TO THE PROVISIONS OF SECTION 17-4 RELATING TO THE DESTRUCTION OF CERTAIN RECORDS CONCERNING CRIMINAL CHARGES.**

TO: Thomas D. Wyatt, Jr., R.Ph.

Chief

Bureau of Narcotic and Drug Control

South Carolina Department of Health and Environmental Control

QUESTION PRESENTED:

Does South Carolina Code Section 17-4, as amended, pertaining to the destruction of records, apply to the records of the Bureau of Narcotic and Drug Control of the South Carolina Department of Health and Environmental Control?

STATUTES, CASES, ETC., INVOLVED:

Sections 17-4 and 32-1510.60(b) of the South Carolina Code of Laws, 1962, as amended; [Peoples National Bank of Greenville v. South Carolina Tax Commission](#), 156 S.E.2d 769, 250 S.C. 187 (1967); [McMillen Food Mills v. Mayer](#), 220 S.E.2d 221, 265 S.C. 500 (1975).

DISCUSSION OF THE ISSUES:

Section 17-4 of the Code of Laws of South Carolina, 1962, as amended, is entitled 'When Records to be Destroyed' and provides as follows:

Any person who after being charged with a criminal offense and such charge is discharged or proceedings against such person dismissed or is found to be innocent of such charge the arrest and booking record, files, mug shots, and fingerprints of such person shall be destroyed and no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law enforcement agency.

The question you have presented concerns whether or not the Bureau of Narcotic and Drug Control of the Department of Health and Environmental Control is considered a law enforcement agency within the framework of Code Section 17-4.

This is apparently a novel question in South Carolina, for I have been unable to locate any judicial or legislative expression as to the meaning of Section 17-4. I have also been unable to locate any judicial construction of the term 'Law Enforcement Agency,' which is used in this statute.

In the absence of prior constructions of the statute or specific legislative statements as to the meaning of terms used within the statute, generally recognized rules of statutory construction must be applied. The primary rule of statutory construction, to which all other rules are secondary, is that the intention of the enacting legislative body must prevail if it can be reasonably discovered in the language used in the statute. [Peoples National Bank of Greenville v. South Carolina Tax Commission](#), 156 S.E.2d 769, 250 S.C. 187 (1967); [McMillen Food Milis v. Mayer](#), 220 S.E.2d 221, 265 S.C. 500 (1975). Using this general guide to construe Section 17–4, it appears that the intent of the General Assembly in promulgating this act was to insure that records of arrests and booking, mug shots, and files containing information about persons charged with committing criminal offenses would not remain a part of official records of any law enforcement agency once the charges were discharged, any proceedings against such person dismissed, or the person was found innocent. This good is accomplished by ordering such files and records to be destroyed, and by further providing that no law enforcement agency shall retain any evidence of any record relating to such charge.

*2 You have pointed out that the Bureau of Narcotic and Drug Control is not in and of itself an ‘agency,’ but that it is only one Bureau of a large State agency, the Department of Health and Environmental Control. While it is true that the Bureau of Narcotic and Drug Control is not an autonomous administrative entity, such as DHEC or the State Highway Department, the Bureau should still fall within the scope of Section 17–4 because of the powers and duties granted its drug inspectors by Act No. 445 of the 1971 Acts and Joint Resolutions for the State of South Carolina. Section 40 of Act 445, now codified in Section 32–1510.60(b), 60(b), as amended, provides that drug inspectors assigned to DHEC shall have the following powers:

1. Statewide police powers;
2. Authority to carry firearms;
3. Authority to execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas and summonses;
4. Authority to make investigations to determine whether there has been unlawful dispensing of controlled substances or the removal of such substances from regulated establishments or practitioners into illicit traffic;
5. Authority to seize property; and,
6. Authority to make arrests without warrants for offenses committed in their presence.

All of these powers and responsibilities are of the sort commonly associated with law enforcement agencies.

Moreover, it is my understanding that the Bureau of Narcotic and Drug Control functions as a law enforcement agency, often conducting investigations and bringing criminal charges against pharmacists, physicians, and other medical practitioners for violations of the laws relating to controlled substances. In so doing, the Bureau of Narcotic and Drug Control generates files and records of the very type that Section 17–4 is designed to guard against—arrest records, booking records, and files relating to criminal charges. Therefore, although the Bureau may not be an ‘agency.’ as the word is commonly used to refer to governmental entities, so far as its enforcement of the controlled substances laws is concerned, it is the opinion of this office that the Bureau of Narcotic and Drug Control is a ‘law enforcement agency’ under Section 17–4 of the 1962 Code of Laws of South Carolina, as amended.

CONCLUSION:

The Bureau of Narcotic and Drug Control of the South Carolina Department of Health and Environmental Control is a law enforcement agency under Section 17–4 of the Code of Laws of South Carolina, 1962, as amended, and is thus subject to the provisions of Section 17–4 relating to the destruction of certain records concerning criminal charges.

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