

1975 S.C. Op. Atty. Gen. 67 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3996, 1975 WL 22294

Office of the Attorney General

State of South Carolina

Opinion No. 3996

March 12, 1975

***1 Re: Maximum Penalty for Summary Court Martial, [32 U.S.C. Section 329\(b\)](#)**

Colonel Clifton B. Wingate
Army Executive Assistant
Office of the Adjutant General
National Guard Armory
1225 Bluff Road
Columbia, SC 29201

Dear Colonel Wingate:

Your letter of March 7, 1975, concerning the summary court martial of Jimmy Lee Herron, requests an opinion on the following questions:

1. Does [32 U.S.C. Section 329\(b\)](#) take precedence over Section 44–204, South Carolina Code of Law (1962)?
2. Does the unit have to refund \$25.00 to Mr. Herron?

The answer to both these questions is ‘yes.’ [Article I, Section 8, Clause 16 of the U.S. Constitution](#) provides for: organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of Officers, and the Authority of training the Militia according to discipline prescribed by Congress; (emphasis added)

Furthermore, Section 44–3, South Carolina Code of Laws (1962) provides that:

The Governor shall cause the organized militia of South Carolina to conform to all Federal laws and regulations as may from time to time be operative and applicable, notwithstanding anything in the laws of this State to the contrary. (emphasis added)

In fact, [32 U.S.C. Section 329\(b\)](#) is an amendatory act to the Act of Congress of June 3, 1916, and specifically incorporated into the South Carolina Military Code by Section 44–2, South Carolina Code of Laws (1962). Therefore, it is obvious that [32 U.S.C. Section 329\(b\)](#) supercedes Section 44–204 of the South Carolina Code.

Since the maximum lawful fine which can be imposed by a summary court is twenty-five dollars, any amount collected above the maximum legal fine must be refunded to Mr. Herron.

If you should have additional questions on this matter, please contact me at your convenience. With best regards, I remain
Very truly yours,

Richard B. Kale, Jr.
Assistant Attorney General

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