

1975 WL 29788 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 7, 1975

***1 Re: Your Inquiry of May 6, 1975**

Honorable John H. Waller, Jr.
House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Waller:

Your inquiry posed the following questions:

- (1) Is it unlawful for a person to possess prescription drugs belonging to another person?
- (2) Does section 32:1510.49(c) of South Carolina Code of Laws mean that it is unlawful for any person to possess controlled substances that were obtained pursuant to a valid prescription when in fact the valid prescription was issued in the name of another person?

These questions were to be answered in reference to the following fact situation:

Mrs. X was arrested for possession of controlled substances. The controlled substances was a Schedule II controlled substance that had been obtained by Mrs. Y pursuant to a valid prescription issued by a licensed practitioner.

Mrs. Y left the prescription pills at the residence of Mrs. X. Later, Mrs. Y telephones Mrs. X and requests that Mrs. X put the prescription pills in her pocketbook so that the young children would not accidentally get the pills. Mrs. Y also requests that Mrs. X return the pills to her (Mrs. Y).

In the meantime Mrs. X is stopped by a highway patrolman who spots the prescription pills in Mrs. X's pocketbook with Mrs. Y's name on the bottle. Mrs. X was charged with possession of controlled substances.

Under these facts, without a showing that Mrs. X obtained the drugs or the prescription through misrepresentation, or fraud, (which would be punishable under § 32-1510.51(a)(3) of the Code) or some other illegal means, she is not criminally liable.

Section 32-1510.49(c) specifically exempts from prosecution possessors of controlled substances when the substances were obtained pursuant to a valid prescription.

Under the plain meaning of this statute, and under the general principles of criminal law concerning scienter, it seems clear that Mrs. X would not be subject to prosecution.

Should you need further information concerning this matter, please feel free to contact me.

Very truly yours,

Joseph R. Barker

Assistant Attorney General

1975 WL 29788 (S.C.A.G.)

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.