

1975 WL 29286 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 22, 1975

*1 Mr. Pearce Thomson
Engineering and Planning Coordinator
South Carolina Department of Parks, Recreation and Tourism
Suite 113
Edgar A. Brown Building
1205 Pendleton Street
Columbia, SC 29201

Dear Mr. Thomson:

This is in response to your letter of September 3, 1975, regarding nude bathers. I am enclosing a previous memorandum which focuses peripherally on this issue and I will outline the laws in this area.

Section 16-413 of the Code of Laws of South Carolina provides that:

Any person who shall be guilty of wilful and malicious indecent exposure of his person on any public place, on property of others or to the view of any person on any street or highway shall be guilty of a misdemeanor and, on conviction, shall be punished by fine or imprisonment, or both, in the discretion of the court.

Since this section uses the terms 'wilful and malicious,' it is questionable whether courts would consider nude bathing or sunbathing as violative of the law. However, PRT, pursuant to its authority under Section 51-3 and 51-76, may adopt a regulation prohibiting nude bathing if you feel that this regulation is 'advisable for the protection, preservation, operation, use and maintenance and for the most beneficial service to the general public of the State parks . . . ' Section 51-3, CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended).

As the attached memorandum suggests, park rules and regulations are not per se laws of the State to which criminal penalties attach. The proper punishment and procedure for violation of one of these regulations is a denial of continued use of the facility which would be implemented by the park's superintendent requesting the bathers to leave. If this request is refused, then nude bathers would be in violation of trespass statutes and could be arrested by law enforcement officers since trespass is a misdemeanor. The officer involved must either procure a warrant or else the offense must be committed in the officer's presence. In the case of large crowds, warrants could not be obtained, as a practical matter, so the officer himself would have to view the offense. Page four of the enclosed memorandum suggests one method of handling the offenders and effecting the arrest, if necessary. Local law enforcement officers and game wardens can enforce these laws as well as other law enforcement officers with Statewide jurisdiction.

Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

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