

1975 S.C. Op. Atty. Gen. 260 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4217, 1975 WL 22514

Office of the Attorney General

State of South Carolina

Opinion No. 4217

December 16, 1975

***1** Persons convicted of assault and battery of a high and aggravated nature and aggravated assault are prohibited, as are those convicted of assault with intent to ravish and assault with a dangerous weapon, under the South Carolina Pistol Act from possessing or acquiring pistols in this State.

TO: Chief

State Law Enforcement Division

QUESTION PRESENTED:

Are persons convicted of certain crimes prohibited by the South Carolina Pistol Act from possessing or acquiring pistols in this State?

STATUTES INVOLVED:

Section 16–129.2(e) of the South Carolina Pistol Act (Section 16–129, et seq. of the 1962 Code of Laws of South Carolina, as amended) prohibits the possession or acquisition of pistols in this State by persons who, among other things, have been convicted of a crime of violence.

Section 16–129(c) defines ‘crime of violence’ as murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

DISCUSSION:

You have inquired whether the last phrase of Section 16–129(c), ‘or assault with intent to commit any offense punishable by imprisonment for more than one year,’ encompasses the crimes of assault and battery of a high and aggravated nature, assault and battery with intent to ravish, assault with a dangerous weapon, and aggravated assault.

Assault and battery of a high and aggravated nature and aggravated assault are clearly within the subject definition inasmuch as they are misdemeanors punishable under Section 17–553, which permits punishment in the discretion of the trial judge up to ten (10) years imprisonment. [State v. Hill](#), 254 S.C. 321, 175 S.E.2d 227 (1970). Therefore, a person convicted of one of the foregoing offenses would be prohibited under the terms of Section 16–129.2(e) from possessing or acquiring pistols in this State.

The remaining crimes of which you have inquired are assault with intent to ravish and assault with a dangerous weapon. Whereas assault with intent to ravish is synonymous with assault with intent to commit rape, which is specifically designated elsewhere in the subject definition as a crime of violence, the offense clearly is a crime of violence and therefore would not be included in the general provision to which you specifically refer since it, or its equivalent, is already expressly

included. Likewise, assault with a dangerous weapon is specifically mentioned elsewhere in the definition and therefore would not fall under the general provision either.

CONCLUSION:

Therefore, it is the opinion of this Office that the crimes of assault and battery of a high and aggravated nature and aggravated assault are included within the general provision of Section 16–129(c) defining ‘crime of violence’ while assault with intent to ravish and assault with a dangerous weapon are expressly included elsewhere therein. Therefore, persons convicted thereof are prohibited under the terms of Section 16–129.2(e) of the South Carolina Pistol Act from possessing or acquiring pistols in this State.

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