1974 WL 27970 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
September 24, 1974

***1** Mr. Mackey Quave
News Director
WOLO-TV
Post Office Box 4217
Columbia, South Carolina 29204

Dear Mr. Quave:
Please accept my apologies for my delay in responding to your telephone inquiry concerning public display of abusive and indecent language. You expressed concern for the seemingly increased use of profane and vulgar language under circumstances that transcend public dignity and offend private sensibilities.

Please be advised that the following Code sections attempt to regulate conduct and speech that are disruptive or offensive to the public peace and decency. For your convenience, I have enclosed copies of each section.
Section 16-551 Disturbing school attended by girls and women

Section 16-552 Sending, etc., obscene message to woman

Section 16-552.1 Use of indecent language over telephone

Section 16-555.1 Contributing to delinquency of a minor

Section 16-557 Disturbance of religious worship

Section 16-558 Public disorderly conduct or shooting, etc.

I am sure you are aware of the necessary interaction of the First Amendment of the United States Constitution in any State or Federal attempt to regulate speech and press. While the freedoms of speech and press under the First Amendment are by no means absolute, those unprotected areas involving speech and press are extremely narrow. The law involving public exhibition or distribution of obscenity or pornography is one such exception. It has been the practice of the United States Supreme Court and other courts to closely scrutinize any State or Federal regulatory scheme involving First Amendment freedoms under the Constitutional microscope for vagueness and overbreadth. See the cases of Chaplinsky v. New Hampshire, 315 U.S. 568 (1942), Gooding v. Wilson, 405 U.S. 518 (1972), Plummer v. The City of Columbus, 414 U.S. 2, 38 L. Ed. 2d 3 (1973) and Lewis v. City of New Orleans, 42 U.S. Law Week 4241 (1974).

Thus while statutes may exist on the books which logically and by their language would regulate offensive public conduct, the same might be considered unconstitutional for overbreadth or vagueness. That challenge has been made with regard to Section 16-558, Code of Laws of South Carolina (1962) as amended, and municipal ordinances containing similar language. See The City of Georgetown v. Scurry, 90 S.C. 396 (1912), State v. Byrnes, 100 S.C. 230 (1913), Town of Bennettsville v. Godbold, 151 S.C. 90 (1929), State v. Hill, 254 S.C. 321, 175 SE2d 227 (1970), State v. Hanapole, 255 S.C. 258 (1970).

More recently the South Carolina Supreme Court had the opportunity to construe Section 16-558 but avoided the issue. See State v. Murray, 261 S.C. 255, 199 SE2d 718 (1973). That case was handled by this Office by Assistant Attorney General Dudley Saleeby. In checking, I found that Mr. Saleeby has done a great deal of research in that area of indecent and abusive language and believe that he would be more qualified than I to answer any further questions that you may have in this area.

***2** I hope that I have been able to provide some of the information that you desire and am confident that Mr. Saleeby would be able to advise you further if you deem that necessary.

With warm regards,
Yours very truly,

John P. Wilson
Senior Assistant Attorney General

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