

1974 WL 27519 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 26, 1974

*1 Honorable John T. Holt, Esquire
Associate Judge of the Civil and Criminal Court of Horry County
County Court House
Conway, South Carolina 29526

Dear Judge Holt;

This is in response to our telephone conversation of November 19, 1974, in which you asked for an opinion of this office as to the state of the law in South Carolina on the crime of solicitation.

For the crime of solicitation to be completed, it is only necessary that the actor, with intent that another person commit a crime, have enticed, advised, invited, ordered, or otherwise encouraged that person to commit a crime. The crime solicited need not be committed. Lafave and Scott, Criminal Law (1972), See Also Perkins on Criminal Law (1969); 22 C.J.S. Homicide § 78. Since 1801 the offense of solicitation has been recognized as a common law offense in the United States. [State v. Beckwith](#), 135 Me. 423, 198 A. 739 (1938); [State v. Hampton](#), 210 N.C. 283, 186 S.E. 251 (1936).

This common law crime is limited to those instances in which the crime solicited is either a felony or one of those misdemeanors which would breach the peace, obstruct justice, or otherwise be injurious to the public welfare. Lafave and Scott, *supra*. Solicitation statutes are to be found in a minority of jurisdictions. Some of these statutes cover the solicitation of any crime; some the solicitation of any felony; and some the solicitation of certain enumerated offenses. South Carolina does not have a solicitation statute, but the crime of solicitation was found to be indictable at common law by the South Carolina Supreme Court in [State v. Bowers](#), 35 S.C. 262, 14 S.E. 488 (1892).

The solicitation of another to commit a felony is uniformly held indictable as a misdemeanor under the common law. [State v. Hampton](#), *supra*; See also 40 C.J.S. Homicide § 70. In view of this fact and the absence of a solicitation statute in South Carolina, sentencing for this offense would fall within the purview of § 17-553 (S.C. Code, 1962).

As to the required mental state, none is explicitly stated in the usual common law definition of solicitation, [Commonwealth v. Flagg](#), 135 Mass. 545 (1883). Likewise, none is expressly set forth in the typical solicitation statute. However, the acts of commanding or requesting another to engage in conduct which is criminal would seem of necessity to require an accompanying intent that such conduct occur, and there is nothing in the decided cases suggesting otherwise.

I trust this information will be of service to you. If I can be of any further assistance, please do not hesitate to contact me.

Very truly yours,

Brian P. Gibbes,
Staff Attorney

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