1972 WL 26126 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 29, 1972

***1** James Cox, Esquire
Saleeby, Saleeby and Herring
Attorneys at Law
P. O. Box 519
Hartsville, South Carolina 29550

Dear Mr. Cox:
Pursuant to your previous request, I enclose herewith copies of Sections 25-55 and 20-11 (as amended) of the City of Greenville Code relating to obscenity. Section 25-55 defines obscenity and makes unlawful certain commercial distribution of obscene books and printed matter. Section 20-11, as amended, now sets forth certain procedural safeguards in the revocation of business licenses by the city. As I told you earlier; these sections were involved in the recent case of City of Greenville v. Dennis L. Bryant, et al, —— S.C. —— (Op. No. 19353, filed Jan. 12, 1972) copy of which is enclosed. In that case, our State Supreme Court affirmed the circuit court's action which upheld the City of Greenville's prior revocation of the license of a bookstore operator based on his offer for sale and sale of certain obscene materials. The Supreme Court avoided the attacks sought to be raised as to the constitutionality of § 20-11 and of the procedures employed on the grounds that the same had not been raised below.

Section 25-55 of the Greenville Code was apparently intended to provide a civil, rather than a criminal, remedy and is restricted in its prohibitions to obscene books or other printed matter thus raising questions as to its applicability with regard to movies. Additionally, Section 2 thereof attempts to provide for the civil suppression of certain printed material and may not embody sufficient safeguards to withstand constitutional attack. See Marcus v. Search Warrant, 367 U.S. 717, 6 L.Ed.2d 727 (1961), and A Quantity of Books v. Kansas, 378 U.S. 205 12 L.Ed.2d 809 (1964).

Section 20-11 is also questionable in several respects when utilized to revoke the business license of a book seller on the basis of his prior sale of obscene materials. The ordinance as written allows an effective revocation and restraint without any judicial determination and thus probably is fatally deficient on its face. See Freedman v. Maryland, 380 U.S. 51, 13 L.Ed. 2d 649 (1965). It would hore likely withstand constitutional attack if such an ordinance required the governing body, after its hearing and decision to revoke, to obtain judicial review of their decision prior to any attempt to effectuate the license revocation. I have additional concern for the basis issue of whether the business license of an individual who is engaged in the commercial distribution of materials possibly protected under the First Amendment can be constitutionally revoked on the basis of his prior sale of only several or a limited quantity of materials found to be obscene.

Finally, I am still satisfied that the safest course in light of the present status of the law is to proceed individually on criminal charges against individuals believed to be violating the State obscenity statute, §§ 16-414.1 et seq., Code of Laws of South Carolina (1962), as amended.

***2** I trust the foregoing will provide the necessary assistance, but I must confess that it is difficult at best to discuss such technical legal questions via letter. Therefore, if any further questions should arise, I shall be happy to discuss the same with you in person.

With best wishes,
Yours very truly,

John P. Wilson
Assistant Attorney General

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