



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

June 18, 2003

Sergeant Bruce McMicking
York Police Department
12 N. Roosevelt Street
York, South Carolina 29745

Dear Sergeant McMicking:

You have requested an advisory opinion from this Office regarding the authority of municipal police officers to make arrests based on violations of federal law. You have asked how the legal issues on this matter apply to three specific areas of law enforcement:

- 1) "I understand we have no authority when it comes to enforcement of immigration law, as that is a special category."
- 2) "In the situation of an individual passing counterfeit currency at a local business establishment, the local police would be called, not the Secret Service. And should we apprehend the subject, under what authority could we detain him?"
- 3) "Under Federal law, it is illegal for an individual having been convicted of Criminal Domestic Violence to possess a firearm. Does a municipal officer have the authority to arrest such a subject if he is found with a weapon?"

Law/Analysis

We begin our analysis with the question of whether current South Carolina law generally authorizes state and local law enforcement officers to arrest for violations of federal law. Typically, South Carolina state and local officers are authorized to arrest for violations of the "criminal laws of this State." See, e.g. S.C. Code Ann. Section 17-13-30 (sheriffs and deputy sheriffs may arrest without warrant any and all persons who, within their view, violate any of the criminal laws of this State); § 23-1-60 (constables appointed to assist in the detection of crime and the enforcement of any criminal laws of this State); § 23-6-140 (officers and troopers shall have the same power and authority held by deputy sheriffs for the enforcement of the criminal laws of the State); § 24-21-280 (a probation agent has the power and authority to enforce the criminal laws of the State).

Based upon these statutes, this Office has consistently concluded that state or local law enforcement officers do not possess the authority to enforce federal law. In an opinion dated September 13, 1971, we concluded that "a State or local officer is an agent of the State, county or

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municipality by which he is employed. He is not empowered to enforce federal law." And, in Op. No. 2066 (June 10, 1966), we stated:

[i]t is therefore apparent, in the opinion of this office that a city police officer or deputy sheriff would not be authorized to arrest a person for failure to have a draft card in his personal possession, the offense being one solely against the laws of the United States. He of course could file a complaint with the proper federal authorities, who would then proceed at their discretion.

The General Assembly has enacted legislation which authorizes the enforcement of state criminal laws by federal law enforcement officers. See, § 23-1-212. However, this Office has consistently recognized that no such enabling authority allowing state and local officers to enforce federal criminal laws exist. See Op. S.C. Attn. Gen., dated March 6, 2002. Accordingly, this Office advises that the York Police Department has no general authority to arrest a person based solely on violation of federal law. We now turn to an application of this general principal to the specific questions that you have raised.

Question #1

In the aforementioned opinion of this Office dated March 6, 2002, we specifically addressed the question of whether South Carolina's state and local law enforcement officers possess authority independently to enforce federal law concerning illegal immigrants. In that opinion we cited a number of authorities which support the conclusion that the Immigration and Naturalization Act, 8 U.S.C. ch. 12, does not preempt state and local law enforcement officers from enforcing the criminal provisions of federal immigration law so long as such enforcement is authorized by the law of that particular state. However, we stated that pursuant to current South Carolina law, state and local law enforcement officers do not possess authority to enforce federal immigration law. This Office is not aware of any recently enacted law that changes this opinion. Any authority to empower state and local law enforcement officers to arrest and detain individuals for violation of the criminal provisions of federal immigration law would have to be provided by a specific enactment of the General Assembly. Accordingly, this Office advises that the York Police Department does not currently have the authority to make arrests solely for violations of federal immigration law because it is not authorized by statute to do so. Officers could, however, "file a complaint with the proper federal authorities, who would then proceed at their discretion." See Ops. S.C. Atty. Gen., dated March 6, 2002 and June 10, 1966.

Question #2

On the question of arresting a person for passing counterfeit currency, there may be probable cause for the York Police Department to effect an arrest based on State law, notwithstanding the inability to enforce related federal law. Section 16-13-10(A)(3) of the Code of Laws makes it an illegal act of forgery for any person to "utter or publish as true any false, forged, or counterfeited writing or instrument of writing." In State v. Wescott, 316 S.C. 473, 450 S.E.2d 598 (1994), our

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Supreme Court stated that three essential elements must be present for an act of forgery by publishing or uttering a forged instrument to be committed in the State of South Carolina:

(1) [the] instrument must be uttered as true or genuine, (2) it must be known by the party publishing or uttering it that it is false, forged or counterfeited, and (3) there must be intent to prejudice, damage, or defraud another person.

It is apparent that the knowing and intentional passing of counterfeit currency in exchange for goods or services obtained from an unwitting party would satisfy the elements of forgery. Therefore, the York Police Department would be authorized by South Carolina law to effect an arrest for the commission of such a crime.

Additionally, the knowing and intentional passing of counterfeit currency would also appear to violate Section 16-13-240 (Obtaining signature or property by false pretenses). That Section defines obtaining property by false pretenses as follows:

A person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property.

The crime of intentionally passing counterfeit currency to obtain goods or services from a unwitting victim appears to be covered by the language of this statute. Accordingly, provided there exist the requisite probable cause, the York Police Department would have the authority to make an arrest when someone knowingly and intentionally passes counterfeit currency based on both the forgery and obtaining property under false pretenses statutes, notwithstanding the existence of federal law that concurrently makes such an activity illegal.

Question #3

On the matter of firearm possession by a person who has been convicted of criminal domestic violence, the York Police Department would have to be authorized by the criminal laws of the State South Carolina in order to arrest such a person. An arrest could not be based solely on federal law. The relevant state statutes and federal statutes are specific as to the type of prior conviction and the type of firearm possessed and must be dealt with separately.

Federal law is reasonably clear on the issue. First and foremost, any person convicted of a felony criminal offense is prohibited from possessing any firearm. 18 U.S.C.A. § 922(g)(1) states that a person "who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year" is prohibited from possessing any type of firearm. As you have correctly stated in your request, federal law also prohibits a person convicted in any court of a misdemeanor crime of domestic violence from possessing a firearm. 18 U.S.C. § 922(g)(9); U.S. v. Kavoukian, 315 F.3d 139 (2nd Cir. 2002). Accordingly, any person who has been convicted of criminal domestic

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violence, either a felony or misdemeanor, would be generally prohibited from possessing any type of firearm under federal law.

As discussed above, the York Police Department cannot make an arrest solely for violations of federal law. To arrest a person based on his or her status as someone ineligible to possess a weapon based on a prior conviction there must be probable cause that the person is in violation of existing state law on the subject. The state law on this issue is found in Section 16-23-30 of the Code. That Section prohibits any person who has been convicted of a "crime of violence" from possessing or acquiring a pistol within the state. See S.C. Code Ann. §16-23-30(a); §16-23-30(e). A "crime of violence" is defined in Section 16-23-10 as:

[m]urder, 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.

The determining issue becomes whether crimes of domestic violence fall within the definition of "crimes of violence" for the purposes of South Carolina gun law. It appears clear that any conviction, or convictions, for simple criminal domestic violence (CDV), as defined by Section 16-25-20 of the Code, would not fit the statutory definition of a crime of violence. When interpreting criminal statutes, our courts have generally applied the rules of strict construction, in favor of the defendant. State v. Lewis, 141 S.C. 207 (1927). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the operation of the statute. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Furthermore, the plain meaning of a statute cannot be contravened. State v. Leopard, 349 S.C. 467, 563 S.E.2d 342 (2002). The statute requires an assault, accompanied by either the presence of a deadly weapon, or an intent to commit a separate and distinct criminal act. A conviction for a simple CDV would satisfy only the "assault" element of Section 16-23-10(c). Therefore, based on the rules of strict construction of the criminal statutes, this Office advises that the law does not appear to prohibit an individual who has been convicted of simple criminal domestic violence from possessing a handgun.

However, it does appear that a conviction for criminal domestic violence of a high and aggravated nature (CDVHAN) could conceivably fall into the statutory definition for a "crime of violence." The crime of CDVHAN is committed when a person causes physical harm or injury, or attempts to do the same, to a member of that person's household, along with an aggravating circumstance. S.C. Code Ann. §16-25-65(A); §16-25-20. Our Supreme Court has defined an "aggravating circumstance" as one which includes the use of a deadly weapon, the intent to commit a felony, infliction of serious bodily injury, great disparity in the ages or physical conditions of the parties, a difference in the gender, the purposeful infliction of shame and disgrace, the taking of indecent liberties with a female, and resistance to lawful authority. State v. Wright, 349 S.C. 310, 563 S.E.2d 311 (2002). CDVHAN is also punishable for up to ten years imprisonment. S.C. Code Ann. §16-25-65(B).

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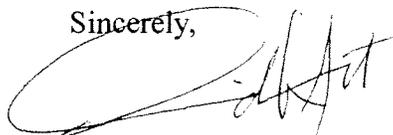
Depending on the nature of the aggravating circumstances, a CDVHAN conviction could statutorily prohibit an individual from possessing a handgun in South Carolina. It seems apparent that if the aggravating circumstance in a conviction for CDVHAN was the use of a deadly weapon, the statutory provision for an "assault with a deadly weapon" would classify such a conviction as a crime of violence. In order for an arrest to be made in this circumstance, however, an officer would have to have some knowledge of the underlying facts of the CDVHAN conviction.

Additional State law regarding the carrying of a pistol is found in Section 16-23-20. That Section generally provides that "[i]t is unlawful for anyone to carry about the person any pistol, whether concealed or not ..." unless one of twelve listed exceptions is present. If a person is carrying a pistol in South Carolina and one of the twelve exceptions do not apply, then that person could be criminally charged with a violation of Section 16-23-20.

Conclusion

Based on the foregoing authorities, this Office advises that the York Police Department has no general authority to arrest a person based solely on violation of federal law. This Office specifically advises that the York Police Department does not currently have the authority to make arrests solely for violations of federal immigration law because it is not authorized by state statute to do so. The York Police Department does have the requisite authority, pursuant to state forgery and obtaining property under false pretenses statutes, to make a probable cause arrest of someone who has knowingly and intentionally passed counterfeit currency, notwithstanding the existence of federal law that concurrently makes such an activity illegal. Additionally, the York Police Department does not have the statutory authority in most cases to arrest a person who possesses a firearm and has been convicted of a crime of domestic violence, notwithstanding the federal statutes which would make such a possession illegal. We do advise that the York Police Department appears to have the statutory authority to charge an individual who is in the possession of a pistol and has been convicted of criminal domestic violence of a high and aggravated nature when the aggravating circumstance involved the use of a deadly or dangerous weapon. Finally, Section 16-23-20, which generally prohibits the carrying of a pistol in South Carolina, must also be analyzed in determining whether someone is in possession of a weapon unlawfully.

Sincerely,



David K Avant
Assistant Attorney General