

## The State of South Carolina



T. Travis Medlock  
Attorney General

803-734-3970  
Columbia 29211-1549

Attorney General

April 19, 1994

The Honorable Carroll A. Campbell, Jr.  
Governor of South Carolina  
Post Office Box 11369  
Columbia, South Carolina 29211

Dear Governor Campbell:

You have requested our opinion as to whether the crime of assault and battery of a high and aggravated nature is a crime of moral turpitude. Based upon the facts alleged in the indictment, which you have provided, we conclude that it is.

Moral turpitude is defined by the South Carolina Supreme Court as:

an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

State v. Horton, 271 S.C. 413, 414, 248 S.E.2d 263 (1978); see also, State v. Morris, 289 S.C. 294, 345 S.E.2d 477 (1986); State v. Drakeford, 290 S.C. 338, 350 S.E.2d 391 (1986); State v. Yates, 280 S.C. 29, 310 S.E.2d 805 (1982). See also, Ops. Atty. Gen. March 20, 1991, January 23, 1991, March 6, 1990, June 13, 1989 and March 11, 1988. Moral turpitude is adaptive to the public morals at a given time, 58C.J.S. Moral, p. 1201, and "implies something immoral in itself, regardless of whether it is punishable by law as a crime." State v. Horton, supra, 248 S.E.2d at 263 (1978).

In State v. Bailey, 275 S.C. 444, 272 S.E.2d 439 (1980), the South Carolina Supreme Court addressed the question of whether assault and battery of a high and aggravated nature is a crime of moral turpitude. There, the Court noted that this crime "...does not, ...invariably constitute a crime of moral turpitude, since that determination depends on the facts of each particular case." 275 S.C. at 446. This is consistent with the

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general law which is that

...the question of moral turpitude depends not only on the nature of the offense, but also on the attendant circumstances. The standard is public sentiment, and this may change as the moral views and opinions of the public change.

21 Am.Jur.2d, Criminal Law, §23, p. 138.

In this instance, the indictment alleges that Kenneth D. Cooke

...did pull victim down on top of him, put his hand on her inner thigh and did kiss the victim. The defendant being six feet in height and weighing 200 lbs. and the victim being five feet in height and weighing 120 lbs. thus being a disparity in the sizes of the defendant and victim.

Sexual offenses of virtually every kind and variety are deemed crimes of moral turpitude. It has been noted that

...sexual crimes, or offenses which pertain thereto, or which are of a similar nature...are all crimes which are regarded as involving moral turpitude.

58 C.J.S., Moral p. 1206. For example, this office has ruled that assault with intent to commit criminal sexual conduct is a crime of moral turpitude. Op. Atty. Gen., Oct. 29, 1981. The Supreme Court has similarly declared criminal sexual conduct with a minor to be such a crime. State v. McFarlane, 279 S.C. 327, 306 S.E.2d 611 (1983). A lewd act upon a child is likewise a crime of moral turpitude, Op. Atty. Gen., Oct. 29, 1981, as is rape, State v. Lee, 269 S.C. 421, 237 S.E.2d 768 (1977) and violation of the Peeping Tom statute, State v. Harris, 293 S.C. 75, 358 S.E.2d 713 (1987).

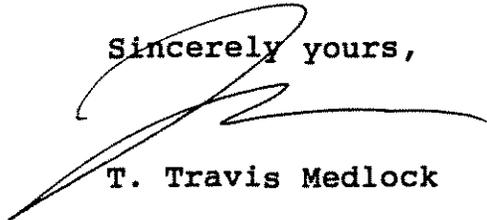
#### CONCLUSION

In the circumstances set forth in the indictment, we find that a crime of moral turpitude has been alleged. Based on the facts alleged, this was a degrading and humiliating sexual assault. The indictment alleges that the victim was physically overpowered by the defendant as the result of a huge physical mismatch and was sexually violated. Public sentiment rightfully loathes sexual violence and deems it immoral in and of itself.

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Accordingly, it must be the factual allegations of sexual violence which control, not the particular offense charged. Therefore, we believe that, based on these allegations, the Governor may suspend pursuant to his constitutional authority. Article VI, Section 8.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'T. Travis Medlock', with a long horizontal flourish extending to the right.

T. Travis Medlock

TTM:kws