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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 6, 1995

Donald D. Aaron, Esquire
City Attorney, City of Cayce
P. O. Box 184
Columbia, South Carolina 29202-0184

Re: Informal Opinion

Dear Mr. Aaron:

Thank you for your recent letter inquiring whether arrest warrants should be issued against an individual for criminal domestic violence (S.C. Code Ann. Sec. 16-25-20) as well as assault and battery even though the same events may form the basis for both warrants. Attorney General Charles M. Condon has asked me to respond.

As you know, the constitutional protection against double jeopardy and Section 22-3-740, S.C. Code Ann. (1993 Supp.) bar prosecutions for certain criminal offenses that arise out of the same incident. See Jivers v. State, 304 S.C. 556, 406 S.E.2d 154 (1991). Therefore, merely issuing arrest warrants for both criminal domestic violence and assault and battery would not appear to contravene either of the provisions noted above. Instead, the ultimate choice as to which offense to pursue is a matter within the discretion of the prosecutor and would depend upon all of the attendant facts and circumstances. In fact, Section 16-25-80 provides in part, "[n]othing in this article may be construed to repeal, replace, or preclude application of any other provisions of law pertaining to assault, assault and battery, assault and battery of a high and aggravated nature, or other criminal offenses."

This letter is an informal opinion only. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

Mr. Aaron
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Again, thank you for your letter. If I can be of assistance to you in the future, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Zeb Williams".

Zeb C. Williams, III
Deputy Attorney General

ZCW,III/an