

1984 S.C. Op. Atty. Gen. 104 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-43, 1984 WL 159850

Office of the Attorney General

State of South Carolina

Opinion No. 84-43

April 13, 1984

*1 The Honorable Jackson V. Gregory
South Carolina House of Representatives
522-C Blatt Building
Columbia, South Carolina 29211

Dear Representative Gregory:

You have asked for the advice of this Office as to the constitutionality of pending House Bill 2100. This law creates a separate criminal offense of unlawful distribution, etc. of drugs within a half-mile radius of a school.¹

The only element of this proposed offense which appears to distinguish it from other laws regulating unlawful drug activity of the same class is the radius provision. See e.g. Section 44-53-370, of the Code of Laws of South Carolina (1976), as amended. The bill states that distribution of drugs in ‘. . . close proximity to the schools of this State present(s) a grave danger to school children . . .’

As you have indicated, this radius provision does appear to be very broad. In an urban area with a radius extending from every school, much of the area would likely be reached by at least one radius.

. . . [A]lthough the wisdom or expediency of a statute is a matter solely for the legislature, a statute, to be upheld, must have some substantial relation to the ends sought to be accomplished. 21 Am. Jur. 2d Criminal Law § 13.

Of course, distribution of certain drugs may be made offenses by the State. The possible problem with the bill in question is that the only apparent distinguishing element of the proposed offense is the radius provision which extends well beyond the immediate vicinity of schools. If the bill created a presumption of intent to distribute to school children, the radius provision might not be a sufficient basis on which to sustain the presumption (see 29 Am. Jur. 2d Evidence § 11). Although this proposed law appears to rely more generally on the contact of children with unspecified dangers arising from drug activity rather than on a presumed intention to distribute (See H-2100, § 1), a similar basis for concern exists. The broadness of the radius provision might cause a court to find that this element of the offense is not reasonably related to the purpose of the law, the protection of school children. See People v. Belcastro, 356 Ill. 144, 190 N.E. 301 (1934); see also, State v. Brewer, 258 N.C. 533, 129 S.E. 2d 262 (1963). In addition, because the radius provision might have the effect of reaching much urban drug activity of the types covered, H-2100 would be essentially the same as other drug laws in its application in those urban areas. See e.g., H-2100 § 2 and Section 44-53-370 of the Code, as amended. Thus, double jeopardy problems might result if a person were subjected to successive prosecutions or cumulative punishments for H-2100 and other offenses. See 21 Am. Jur. 2d Criminal Law § 266.

This matter is not free from doubt as contrary arguments might be made to support the extent of this radius. Cf. Section 59-67-420, of the Code. Moreover, as noted above, the wisdom of statutes is a matter for the legislature to decide. If this bill became law, it would be entitled to the strong presumption of constitutionality accorded legislation. See Ops. Atty. Gen. (August 18, 1983), cf. Chesterfield Co. v. State Highway Dept., 191 S.C. 19, 3 S.E. 2d 686 (1939). We merely note herein possible problems in the application of this bill for your guidance as a legislator.

*2 If we may be of other assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

- 1 The title refers to a 1000 yard radius which is somewhat longer than a half-mile. See, Sutherland Statutory Construction, Vol. 1A, § 18.06 (4th Ed.).
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