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ATTORNEY GENERAL

April 24, 2015

Mr. Michael Beauford Jr.  
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South Carolina Department of Insurance  
Post Office Box 100105  
Columbia, South Carolina 29202-3105

Dear Mr. Beauford:

You have requested the opinion of this Office as to whether the crime of impersonating a law enforcement officer<sup>1</sup> would be considered a crime of moral turpitude. Based on the analysis below, we believe that a court would likely find that it would.

#### Law/Analysis

Our Supreme Court has defined a crime of moral turpitude as “an act of baseness, vileness, or depravity in the private and social duties that 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.” Smith v. Smith, 194 S.C. 247, 9 S.E.2d 584, 589 (1940); see also State v. Drakeford, 290 S.C. 338, 340, 350 S.E.2d 391, 392 (1986); State v. Morris, 289 S.C. 294, 296, 345 S.E.2d 477, 478 (1986); State v. Yates, 280 S.C. 29, 37, 310 S.E.2d 805, 810 (1982), overruled by State v. Torrence, S.C., 280 S.C. 29, 310 S.E.2d 805 (1982); State v. Horton, 271 S.C. 413, 414, 248 S.E.2d 263, 263 (1978). Opinions of our Office on the subject of moral turpitude have consistently recognized the same. See, e.g., Op. S.C. Att’y Gen., 2014 WL 2538230 (May 12, 2014); Op. S.C. Att’y Gen., 2007 WL 655616 (Feb. 5, 2007); Op. S.C. Att’y Gen., 1998 WL 61843 (Jan. 27, 1998). Moreover, “moral turpitude implies something immoral in itself, regardless of whether it is publishable by law as a crime.” State v. Horton, 271 S.C. 413, 414, 248 S.E.2d 263 (1978) (citing 58 C.J.S. Morals at 1203). Behavior that is primarily self-destructive typically does not involve moral turpitude, which requires a breach of duty to society and one’s fellowman. State v. Major, 301 S.C. 181, 184, 391 S.E.2d 235, 237 (1990). Thus, it

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<sup>1</sup> S.C. Code Ann. § 16-17-720 provides that:

[i]t shall be unlawful for any person other than a duly authorized law-enforcement officer to represent to any person that he is a law-enforcement officer and, acting upon such representation, to arrest or detain any person, search any building or automobile or in any way impersonate a law-enforcement officer or act in accordance with the authority commonly given to such officers. Nothing in this section shall be construed to prohibit a private citizen from making a citizen’s arrest in accordance with the laws of this State.

Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than five hundred dollars or imprisoned for not more than one year.

follows that while all crimes involve some degree of social irresponsibility, not every crime is one that involves moral turpitude. State v. LaBarge, 275 S.C. 168, 172, 268 S.E.2d 278, 280 (1980).

“In determining whether a crime is one involving moral turpitude, the Court focuses primarily on the duty to society and fellow man which is breached by the commission of a crime.” State v. Ball, 292 S.C. 71, 73, 354 S.E.2d 906, 908 (1987), overruled on other grounds by State v. Major, 301 S.C. 181, 391 S.E.2d 235 (1990). Furthermore, it has been concluded that “[m]ost offenses found to involve moral turpitude . . . seem to include some sort of dishonest behavior . . . .” McAninch and Fairey, The Criminal Law of South Carolina, 45 (3rd ed. 1996); see also State v. Hall, 306 S.C. 293, 295, 411 S.E.2d 441, 442 (Ct. App. 1991) (quoting the above in its analysis of whether first offense driving under the influence and resisting arrest were crimes of moral turpitude).

Applying the aforementioned standards to the crime of impersonating a law enforcement officer, we first point out the case of State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001). In Cheeseboro, our Supreme Court addressed the question of whether a prior conviction of impersonating a law enforcement officer was correctly admitted by the trial court for purposes of impeachment. State v. Cheeseboro, 346 S.C. 526, 544, 552 S.E.2d 300, 310 (2001). Because the “moral turpitude standard” formerly used by our courts to determine whether prior convictions of a witness were admissible for purposes of impeachment was replaced with the adoption of Rule 609, SCRE,<sup>2</sup> analysis rested on whether impersonating a law enforcement officer involved “dishonesty or false statement” pursuant to Rule 609(a)(2), SCRE. Id. Finding the conviction was admissible, the Cheeseboro Court reasoned as follows:

[e]vidence of a conviction of a crime involving dishonesty is admissible for impeachment regardless of the punishment. Federal courts applying this rule under the Federal Rules of Evidence have held criminal impersonation is a crime involving dishonesty and therefore admissible. We agree with the approach taken by the federal courts and hold, since impersonating an officer involves a misrepresentation, it is a crime involving dishonesty and therefore admissible under Rule 609(a)(2) regardless of the punishment it carries.

Id. at 544-45, 552 S.E.2d at 310 (internal citations omitted). As crimes of moral turpitude typically involve some sort of dishonesty, we believe the Court’s determination in Cheeseboro that a prior conviction for impersonating a law enforcement was properly admitted for impeachment purposes under Rule 609(a)(2) as a crime of dishonesty is highly relevant as to whether such crime would also be considered a crime of moral turpitude.

We also point out a prior opinion of this Office issued on June 9, 2008 that addressed what crimes would likely be considered crimes of “dishonesty or a breach of trust” as provided in 18 U.S.C. § 1033(e)(1)(A) that states:

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<sup>2</sup> See State v. Johnson, 363 S.C. 53, 609 S.E.2d 520 (2005) (discussing replacement of moral turpitude standard with Rule 609, SCRE).

[a]ny individual who has been convicted of any criminal felony involving dishonesty or a breach of trust, or who has been convicted of an offense under this section, and who willfully engages in the business of insurance whose activities affect interstate commerce or participates in such business, shall be fined as provided in this title or imprisoned not more than 5 years, or both.

Op. S.C. Att’y Gen., 2008 WL 2614984 (June 9, 2008) (quoting 18 U.S.C. § 1033(e)(1)(A)). We noted that because most offenses involving moral turpitude seem to include dishonest behavior, “reference to what offenses have been deemed crimes of moral turpitude may be useful in determining whether an offense is within the category of a felony involving dishonesty for purposes of the cited federal statute.” Id. at \*2. In line with the reasoning of our 2008 opinion, we believe the inverse to also be true. In other words, crimes deemed to be crimes of dishonesty, such as impersonating a law enforcement officer, would be a useful indicator in determining whether the offense also categorizes as a crime of moral turpitude.

Cases outside of our jurisdiction also provide support for the conclusion that the crime of impersonating a law enforcement officer would be considered a crime of moral turpitude. In particular, our research reveals that crimes of impersonation, be it impersonation of a public official, a licensed professional, or criminal impersonation generally, have been regarded as crimes of moral turpitude. See Beltran-Rubio v. Holder, 565 Fed.Appx. 704 (10th Cir. 2014) (concluding conviction under Colorado’s criminal impersonation statute was a crime of moral turpitude because the statute involves fraud in knowingly assuming a fake identity or capacity to achieve an intended goal); United States v. Bell, 351 F.2d 868, 873-74 (6th Cir. 1965) (finding the trial court’s ruling that the crime of impersonating a police officer with intent to defraud another person of a sum of money was properly admitted for impeachment purposes as the crime was “a misdemeanor involving moral turpitude”); Garner v. Bureau of Prof’l and Occupational Affairs, State Bd. of Optometry, 97 A.3d 437, 440-41 (Pa. Commw. Ct. 2014) (holding that because crimes of official oppression and impersonating a public servant involve misrepresentation or concealment to induce others to act to their detriment, they include fraudulent conduct and therefore constitute crimes of moral turpitude); Saulmon v. State, 614 P.2d 83, 88 (Okla. Crim. App. 1980) (stating that “[b]ecause the crime of impersonating a medical doctor involves deceit and misrepresentation it would appear to be encompassed by the definitions previously announced by the Oklahoma Supreme Court as involving moral turpitude”).

Mr. Michael Beauford Jr.

Page 4

April 24, 2015

**Conclusion**

As a crime of dishonesty, implying something immoral in and of itself, it is our opinion that a court would likely conclude that impersonation of a law enforcement officer is a crime of moral turpitude contrary to the customary rule of right and duty between man and man.

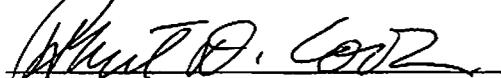
Should you have any additional questions, please do not hesitate to contact our office.

Very truly yours,



Anne Marie Crosswell  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
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