

1977 WL 37291 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 5, 1977

**\*1 In Re: House Bill No. 2446**

Mr. Joseph F. Runey  
Staff Counsel  
Labor, Commerce and Industry Committee  
House of Representatives  
Post Office Box 11867  
Columbia, South Carolina 29211

Dear Mr. Runey:

Your letter of March 25 requests my 'first impression' view with respect to House Bill 2446.

H-2446 provides essentially that it shall be unlawful for any person to haul building materials as defined in the Act on the highways of this State between 7:00 p.m., and 5:00 a.m., unless the conveyance used is owned by a public agency or public utility or unless:

'the driver of the hauling conveyance has in his possession documents which establish the ownership of such materials.'

It is my opinion that this provision most probably is violative of the commerce clause of the Constitution of the United States for the reason that it will impose a restraint on trade beyond permissible limits. Sufficient time has not elapsed for thorough research but this will be undertaken should you so desire.

Section 2 of the statute authorizes searches without warrants of conveyances suspected of hauling building materials between the hours designated.

It is my opinion that this is an unconstitutional provision in that it authorizes unwarranted searches in violation of the provisions of Article I, Section 10 of the Constitution of South Carolina and the corresponding provisions of the United States Constitution.

Very truly yours,

Daniel R. McLeod  
Attorney General

#### **ATTACHMENT**

##### **A BILL**

To Prohibit the Hauling of Building Materials between 7:00 P. M. and 5:00 A. M. without Documents to Establish Ownership and Source of Such Materials; to Authorize Law Enforcement Officers to Search Vehicles without Warrants During Such Hours upon Reasonable Suspicion that they are Hauling Building Materials in Violation of this Act; to Exempt Public Vehicles and Public Utility Vehicles from this Act; and to Provide Penalties for Violations.

*Be it enacted* by the General Assembly of the State of South Carolina:

SECTION 1. It shall be unlawful for any person to haul building materials by any means of conveyance on the highways and streets of this State between the hours of 7:00 p. m. and 5:00 a. m. except under the following conditions:

- (1) The driver of the hauling conveyance has in his possession documents which establish the ownership of such materials, or
- (2) The conveyance is owned by a public agency or public utility and is operated by an authorized employee of such agency or utility.

SECTION 2. Any law enforcement officer may search without warrant between 7:00 p. m. and 5:00 a. m. a conveyance which he suspects to be hauling building materials in violation of the provisions of this act.

SECTION 3. As used in this act, 'building materials' shall mean any materials customarily used in building and construction work with a reasonable fair market value in excess of twenty-five dollars.

\*2 SECTION 4. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be fined twenty-five dollars. Such penalty shall not bar prosecution ??

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