

1978 WL 35062 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 25, 1978

***1 RE: Opinion Request**

Colonel J. L. Altman, Jr.
Chief of Police
City of Beaufort
P. O. Box 889
Beaufort, S. C. 29902

Dear Colonel Altman:

I am in receipt of your proposed ordinance submitted to this office for review as to its legality. As set out below, I have some concern as to its propriety.

The proposed ordinance is similar to [Section 16-23-460, South Carolina Code of Laws \(1976\)](#), prohibiting carrying certain concealed deadly weapons. As pointed out by Assistant Attorney General Richard P. Wilson in his letter to you of May 19, 1978, it is permissible for a municipality to enact ordinance consistent with the general statutes of this state. This is, as long as the proposed ordinance enlarges upon the provisions of the general statute, no conflict arises unless that statute limits the requirements for all cases to its own proscription. 5 [McQuillan](#), *Municipal Corporations*, Section 15.22. Your proposed ordinance appears only to enlarge the substantive provisions of [Section 16-23-460](#) and to this extent, would be proper.

The ordinance enlarges the prohibitions of [Section 16-23-460](#) by proscribing the carrying of knives with blades of more than two and one-half inches in length and 'mu-chucks' (sic). An across the board prohibition of such knives appears to be impermissably broad; the prohibition against the mu-chucks, however, appears proper.

The legislature, in passing [Section 16-23-460](#), intended to outlaw the carrying of deadly weapons, instruments which when used in the ordinary manner contemplated by their design are likely to cause bodily harm. As Mr. Wilson explained in his opinion to you, a dirk meets such a description. However, not all knives do meet such a description. An ordinance proscribing the carrying of all knives, irrespective of whether considered deadly, paints too broadly and is constitutionally impermissible. Cf. [Cox v. Louisiana](#), 379 U.S. 536 (1965); [Eisenstadt v. Baird](#), 405 U.S. 438 (1972). Research reveals no authority for characterizing or classifying a knife as a deadly weapon solely on the basis of the length of its blade. As Mr. Wilson stated, the deadly character of a given weapon for the purposes of the statute cited above depends upon the circumstances of each individual case made under that statute. Therefore, prohibiting the carrying of knives with blades of more than two and one-half inches may encompass knives not considered to be deadly; such an ordinance would be impermissably broad.

A couple of suggestions are in order. Since it is conceivable that the knives discussed above in certain circumstances may be considered deadly within the meaning of [Section 16-23-460](#), therefore cases may be made under that statute. Further I might suggest that your ordinance may legislate that a knife with a blade longer than two and one-half inches constitutes prima facie evidence of a deadly or dangerous character. However, before this is done it must be shown by some evidence presented to city council that a blade of that length is sufficient to cause death. This might be shown by medical testimony or by some other inherently credible evidence. In any event, your prima facie showing must be supported by some evidence indicating basis in fact.

*2 The prohibition against carrying 'mu-chucks' or 'nun-chucks', appears to be proper. Research indicates that a 'nun-chuck' consists of two sticks which are connected by chain or cord and which are used by those trained in karate. Tatom v. State, 555 S.W.2d 549 (1977). It also appears that the 'nun-chucks' were designed for the purpose of inflicting serious bodily injury or death upon a person by striking him. In this regard a 'nun-chuck' would appear to be a weapon sufficiently deadly or dangerous to militate in favor of prohibiting an individual from carrying it concealed about his person.

It is imperative that an additional concern be here mentioned. The General Assembly has determined that the offense of carrying a deadly weapon concealed about the person shall be a misdemeanor carrying a penalty of as much as Five Hundred (\$500.00) Dollars or imprisonment of ninety (90) days. Of course, the ordinance you propose carries a maximum penalty of One Hundred (\$100.00) Dollars or imprisonment of thirty (30) days. Passage of your ordinance has the effect of deprecating the gravity of the offense as envisioned by the legislature. To avoid this deprecating effect, we suggest that you attempt to work within the framework of [Section 16-23-460](#) and make your cases in General Sessions Court. As we said above, the statute is sufficiently broad to meet many of the particular situations encountered by your force and metes out punishment commensurate with the gravity of the offense.

If you have any questions about this opinion or any questions resulting from this opinion, please don't hesitate to contact me.

Sincerely,

Scott Elliott
Staff Attorney

1978 WL 35062 (S.C.A.G.)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.