



ALAN WILSON
ATTORNEY GENERAL

August 16, 2017

Thomas A. Limehouse, Jr., Esquire
Legal Counsel
Office of the Governor
1100 Gervais Street
Columbia, SC 29201

Dear Mr. Limehouse:

Attorney General Alan Wilson has referred your letter dated August 7, 2017 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

Please allow this letter to serve as a formal request for an opinion of the Office of the Attorney General regarding whether the enclosed Indictment charges "a crime involving moral turpitude" for purposes of Article VI, Section 8 of the South Carolina Constitution.

As you will see, the subject Indictment is titled "ARREST/INTERFERENCE, HINDERING OFFICERS SERVING WARRANT OR RESCUING PRISONERS" and alleges a violation of section 16-5-50 of the South Carolina Code of Laws. According to our preliminary research, the Supreme Court of South Carolina has discussed section 16-5-50 on more than one occasion, e.g., State v. Alls, 330 S.C. 528, 500 S.E.2d 781 (1998); State v. Etherage, 111 S.C. 523, 290 S.E.2d 413 (1982), but has not been squarely presented with the question of whether it constitutes "a crime involving moral turpitude." Moreover, although the Office of the Attorney General has analyzed crimes of or involving moral turpitude in numerous prior opinions, it does not appear that your office has been asked to comment on this particular statutory provision. However, previous opinions have addressed analogous issues and somewhat similar offenses, including but not limited to the following: Op. S.C. Att'y Gen., 2015 WL 2148106 (Apr. 24, 2015) (discussing the crime of impersonating a law enforcement officer); Op. S.C. Att'y Gen., 1991 WL 474741 (Feb. 12, 1991) (discussing the offense of resisting arrest); Op. S.C. Att'y Gen., 1983 WL 181726 (Jan. 24, 1983) (discussing contempt of court due to attempted grand jury tampering).

In light of the foregoing, we respectfully request an opinion of the Office of the Attorney General as to whether the enclosed Indictment charges an offense that constitutes "a crime involving moral turpitude."

Law/Analysis:

As you mention in your letter, the South Carolina Constitution authorizes the Governor to suspend from office State officials for a crime involving moral turpitude when it states that:

Any officer of the State or its political subdivisions, except members and officers of the Legislative and Judicial Branches, who has been indicted by a grand jury for a crime involving moral turpitude or who has waived such indictment if permitted by law may be suspended by the Governor until he shall have been acquitted. In

case of conviction the office shall be declared vacant and the vacancy filled as may be provided by law. (1972 (57) 3181; 1973 (58) 83.)

S.C. Const. art. VI, § 8. The Supreme Court of South Carolina has defined moral turpitude as “an act of baseness, vileness or depravity in the private and social duties that a 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.” State v. Smith, 194 S.C. 247, 259, 9 S.E.2d 584 (1940); State v. Horton, 271 S.C. 413, 238 S.E.2d 263 (1978); State v. Lilly, Supreme Court of South Carolina, Op.No. 21840 (January 4, 1983). This Office has also previously opined regarding moral turpitude that:

In determining whether a crime involves moral turpitude, one looks, not to instances involving self-destructive behavior but, rather, instances where the duty to society and fellow man ... is breached by the commission of the crime

...

... (T)he question of moral turpitude depends not only on the nature of the offense, but also on the attendant circumstances. The standard is public sentiment, and this may change as the moral views and opinions of the public change ...

Op. S.C. Att’y Gen., 1991 WL 474741 (February 12, 1991) (quoting State v. Ball, 292 S.C. 71, 73, 354 S.E.2d 908 (1987) (overruled by State v. Major, 301 S.C. 181, 391 S.E. 2d 235 (1990), which held that possession of cocaine is a crime of moral turpitude) and 21 Am.Jur.2d Criminal Law, § 23, p. 138)).

As you mention in your letter, in 2015 this Office was asked to opine whether impersonating a law enforcement officer was a crime of moral turpitude. See Op. S.C. Att’y Gen., 2015 WL 2148106 (April 24, 2015). That opinion relied on various cases and legal authority for its conclusion that a court would likely conclude that impersonating a law enforcement officer would be a crime of moral turpitude. Id. One such case cited in the 2015 opinion was the Garner case where the Pennsylvania Commonwealth Court held that the crimes of official impersonation and impersonating a public servant were crimes of moral turpitude. Garner v. Bureau of Professional & Occupational Affairs, State Board of Optometry, 97 A.3d 437 (2014). While we are not privy to all the facts in the Garner case, the record shows the optometrist with an inactive license was elected as a Pennsylvania State Constable in 2009 and was convicted in 2011 of three counts of official impersonation and two counts of impersonating a public servant. Id. The case states that the Defendant presented a badge, which we presume was the Defendant’s constable badge, though the opinion does not specify whose badge it was. The convictions for impersonating a public servant demonstrate that the Defendant was not, in fact, the public servant he was impersonating. In reviewing the convictions, the facts in the indictment you ask about are similar to those that are published in the Garner case. This Office recognizes that Garner was a Pennsylvania case and that a court may rule differently regarding South Carolina law.

Some of the principles in Garner are analogous to the facts presented here in that this Defendant was, at the time of the incident, a town councilman who interfered with the service of a traffic ticket at a traffic stop involving one of his family members.¹ The facts in the incident report indicate that the councilman held himself out to be the “boss” of the law enforcement officer and the “police commissioner” and attempted to interfere with the law enforcement officer’s issuance of a traffic citation. Just as in Garner where the Defendant was, either at the time of or preceding the incident, an elected

¹ The facts are based on the indictment and incident report. See 2017 GS38-0726, Orangeburg County; 2017A3810700254.

constable, here the Defendant intentionally and deceptively exceeded his authority as an officer of the State and its political subdivisions.² While this Office is not privy to all the facts, circumstances and prior history in the case, we believe a court would likely find that impersonating the “boss” of a law enforcement officer especially resulting in the interference of the service of a traffic citation³ would be a crime of moral turpitude consistent with the decision in Garner v. Bureau of Professional & Occupational Affairs, State Board of Optometry, 97 A.3d 437 (2014) and based on the “duty to society and fellow man.” State v. Ball, 292 S.C. 71, 73, 354 S.E.2d 908 (1987) (overruled by State v. Major, 301 S.C. 181, 391 S.E. 2d 235 (1990), which held that possession of cocaine is a crime of moral turpitude).⁴

Conclusion:

While this Office is not privy to all the facts, circumstances and prior history involved in the case, this Office has previously opined that we believe impersonating a law enforcement officer is a crime of moral turpitude and thus we likewise conclude that we believe a court would determine that an elected official holding an office of the State (or its political subdivisions) who intentionally and deceptively impersonated the “police commissioner” and “boss” of a law enforcement officer and attempted to “hinder, obstruct, interfere or prevent” a law enforcement officer’s attempt to serve a traffic citation, would have committed a crime of moral turpitude based on the decision in Garner v. Bureau of Professional & Occupational Affairs, State Board of Optometry, 97 A.3d 437 (2014) and based on the “duty to society and fellow man.” State v. Ball, 292 S.C. 71, 73, 354 S.E.2d 908 (1987) (overruled by State v. Major, 301 S.C. 181, 391 S.E. 2d 235 (1990), which held that possession of cocaine is a crime of moral turpitude).⁵ See Op. S.C. Att’y Gen., 2015 WL 2148106 (April 24, 2015). Nevertheless, as you are aware, South Carolina Const. art. VI, § 8 uses permissive language “may be suspended” while our question answers whether we believe a court would find the crime to be one of moral turpitude. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair
Assistant Attorney General

² According to the facts provided

³ Which we presume from the facts was a Uniform Traffic Ticket

⁴ Noting that service of the Uniform Traffic Ticket vests a court with jurisdiction to hear the charge. S.C. Code § 56-7-10; Ops. S.C. Att’y Gen., 2014 WL 3752137 (July 14, 2014); 2002 WL 31341819 (October 4, 2002); 1978 WL 34909 (May 15, 1978). Also please note that the Supreme Court of South Carolina has ruled that S.C. Code § 16-5-50 applies to offenses against civil rights in 1998, and for purposes of this opinion we presume the facts fall within the purview of the court’s decision. See State v. Alls, 330 S.C. 528, 500 S.E.2d 781 (1998).

⁵ These are quotes from the indictment. See 2017 GS38-0726, Orangeburg County.

Thomas A. Limehouse, Jr., Esquire
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REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line.

Robert D. Cook
Solicitor General