

1975 WL 29549 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 3, 1975

**\*1 Re: Applicability of Section 16-314 to the burning of an uninsured automobile by the owner or another acting under his direction**

Honorable William B. Traxler, Jr.  
Assistant Solicitor  
Thirteenth Judicial Circuit  
Room 214  
County Courthouse Annex  
Greenville, South Carolina 29601

Dear Mr. Traxler:

You have requested an opinion of this Office regarding the application of Section 16-314 of the 1962 Code of Laws of South Carolina to the situation where a person, or another acting under his direction, intentionally sets fire to his own automobile which is uninsured.

The burning of personal property including crops was first proscribed in this State by Act No. 651 of 1928, the prototype of our 1962 Code Section 16-314, which in Section 3 stated:

That any person who wilfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any barracks, cock, crib, rick, or stack of hay, corn, wheat, oats, barley or other grain or vegetable product of any kind; or any field of standing hay or grain of any kind; or any pile of coal, wood or other fuel; or any pile of planks, boards, posts, rails or other lumber; or any street car, railway car, ship, boat or other water craft, automobile or other motor vehicle; or any other personal property not herein specifically named (such property being of the value of twenty-five dollars and the property of another person); shall upon conviction thereof be sentenced to the penitentiary for not less than one nor more than three years.

In 1952 the format of that statute was altered to its present form as Section 16-314, which divided the original clauses into separate enumerated subdivisions and placed the words 'or any other personal property not herein specifically named (such property being of the value of twenty-five dollars and the property of another person)' under a seemingly distinct portion of the statute in a more concise form.

As is readily apparent from a reading of the original act, it is clear, in my view, that the above-referenced clause containing the phrase 'of another' was intended to serve as a general qualification having reference to the preceding specific enumerations of personal property, the burning of which was made punishable by law. Therefore, our modern Section 16-314, in my opinion, would apply to the wilful and malicious burning by an individual of the personal property of another person, excepting only those items not specifically listed and having a value of less than twenty-five dollars.

A contrary construction would, of course, conflict with our common law notions of personal property and rights of ownership. This position, moreover, is consistent with established rules of statutory construction. 2A Sutherland Statutory Construction, §§ 47.17, 47.18, 47.33 (4th Ed. 1973).

That a person may dispose of his own personal property by burning is therefore certain. Equally clear is that he may authorize and direct another person to so dispose of his property. That person, therefore, would be acting under the direction of the owner and would not be liable for violation of Section 16-314, as the acts of a servant are deemed to be those of the master. Were there a question as to the existence of such a relationship, it would seem that a defense of consent by the owner could be successfully interposed.

\*2 Therefore, it is my opinion that Section 16-314 of the 1962 Code of Laws of South Carolina does not in and of itself prohibit the burning of one's own automobile either by the owner himself or another person acting under his direction.  
Very truly yours,

Richard P. Wilson  
Staff Attorney

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