

1975 WL 29833 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 26, 1975

\*1 Captain W. E. Rabon  
Uniform Division  
Columbia Police Department  
1409 Lincoln Street  
Columbia, S. C. 29201

Dear Captain Rabon:

This is in reply to our earlier conversation and your letter of May 23, 1975. You have requested the Opinion of this Office as to the legality of the product described as 'KRISTEE' (Defender of Women) under Section 16-147, 1962 Code of Laws.

Section 16-147 makes it a misdemeanor for anyone except law enforcement officials 'to have in possession, use, transport, sell or buy any tear-gas machine or gun or any part thereof or any ammunition or shells or equipment that may be used in a tear-gas gun or machine'.

Attorney General McLeod, in an opinion rendered February 28, 1973, stated that tear gas has no specific definition but is a broad term commonly contemplating and meaning a gas having a lachrymose or tear producing effect. The 'KRISTEE' device clearly renders this effect as advertised on the device, '. . . Irritating to eyes, nose, and skin'.

The 'KRISTEE' device or one extremely similar to the 'KRISTEE' device has been deemed illegal under the California Penal Code ([West's Ann. Pen. Code, § 12420](#)). In the case of [People v. Autterson](#), 68 Cal. Rptr. 113, 261 C.A.2d 627 (1968) the Court ruled that a device called 'Defender of Women' and containing oleoresin Capsicum (the same subtitle and active ingredients of the 'KRISTEE') constituted a tear gas machine. The applicable statute was similar to our own and possession of the device was ruled illegal.

The [California Penal Code \(§ 12401\)](#) defines tear gas not as any specific chemical but to 'apply to and include all liquid, gaseous, or solid substances intended to produce temporary physical discomfort or permanent injury through being vaporized or otherwise dispersed in the air . . .' We think the definition thus pronounced is a reasonable interpretation of the meaning of tear gas as contemplated by Section 16-147.

It is therefore the opinion of this Office that the device known as 'KRISTEE' which disperses in the air a solution of oleoresin capsicum for purposes of producing physical discomfort cannot be possessed, used, transported, bought or sold without violation Section 16-147.

Yours truly,

Cameron B. Littlejohn, Jr.  
Staff Attorney

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