

1973 WL 26628 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 21, 1973

***1 In re: City Policemen; Required Training.**

Honorable Jack H. Keel
Member City Council
Box 607
Barnwell, South Carolina

Dear Mr. Keel:

You have inquired as to the effect of the hiring of a city policeman in violation of Section 53-41, et seq., 1902 Code of Laws of South Carolina, as amended.

Section 53-44 provides that any law enforcement officer, below the rank of chief, hired after January 1, 1972, shall take the required training within one year after his date of appointment. Any such officer who does not complete successfully such training within one year from date of appointment is divested of his authority as a police officer by operation of law. Certain exceptions to this rule are set forth in Section 53-44.

You inquire, further, as to the legality of an arrest made by a police officer who is in violation of Section 53-44. If the offense involved is a misdemeanor, and not a breach of the peace, and the arrest is made without a warrant, the arrest would be unlawful. If the offense is a felony, the arrest would be lawful, because any citizen may arrest for a felony or breach of the peace.

Even when the arrest is unlawful, however, subsequent prosecution is not necessarily affected. In South Carolina, an unlawful arrest does not automatically proscribe prosecution for the offense, even though the officer or other person making the arrest might be vulnerable in a false arrest civil suit in State or Federal court.

Yours very truly,

Joseph C. Coleman
Deputy Attorney General

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