CHAPTER 7

Offenses Against the Peace

ARTICLE 1

Offenses During State of Emergency

**SECTION 16‑7‑10.** Illegal acts during state of emergency.

 (A) In any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to:

 (1)(a) violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation;

 (b) congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or

 (c) wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer.

 A person violating the provisions of this item is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.

 (2)(a) enter into the property of another, without lawful authority and with criminal intent;

 (b) damage the property of another; or

 (c) take possession or otherwise disturb the property of another in any manner.

 A person violating a provision of this item is guilty of the felony of looting and, upon conviction, must be fined or imprisoned, or both, in the discretion of the court. The court must order restitution pursuant to Section 17‑25‑322;

 (3) charge unconscionable prices during a declared state of emergency or disaster, as described in Section 39‑5‑145, or knowingly and wilfully use a misleading practice or device to solicit the contribution or sale of goods or services for charitable purposes in connection with a declared state of emergency or disaster, as described in Section 39‑5‑147.

 (B) Penalties provided in this article are cumulative of and in addition to those provided in Sections 39‑5‑145 and 39‑5‑147.

HISTORY: 1962 Code Section 16‑171; 1968 (55) 2741; 2002 Act No. 339, Section 8, eff July 2, 2002.

Editor’s Note

2002 Act No. 393, Section 45, provides as follows:

“This act takes effect upon approval by the Governor, and applies to offenses committed after its effective date and to causes of action arising or accruing on or after the effective date.”

CROSS REFERENCES

Declaration of martial law, see SC Const. Art. I, Section 21.

Library References

War and National Emergency 1339 to 1351.

Westlaw Topic No. 402.

C.J.S. War and National Defense Sections 76 to 79.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 24, Powers of the Governor.

Attorney General’s Opinions

Whether a salvage operation, as opposed to looting, is taking place on the vessels washed ashore as a result of Hurricane Hugo, would require determinations to be made on a case‑by‑case basis. 1989 Op.Atty.Gen., No 89‑117, p 319 (1989 WL 406206).

**SECTION 16‑7‑20.** Powers of law enforcement officers.

 All law enforcement officers of the State or any of its subdivisions who may be called to duty in the area designated by the Governor in his proclamation, when engaged in the performance of duties in such area, shall have the full powers of constable at all places within such area and may pursue and arrest offenders against the laws of this State or the provisions of the proclamation.

HISTORY: 1962 Code Section 16‑172; 1968 (55) 2741.

CROSS REFERENCES

Constables, generally, see Section 22‑9‑10 et seq.

Peace officers, generally, see Section 23‑1‑15 et seq.

Power of sheriff to arrest without warrant for offenses committed in view, see Section 17‑13‑30.

Sheriffs, generally, see Sections 23‑11‑10 et seq., 23‑13‑10 et seq., 23‑15‑20 et seq., 23‑17‑10 et seq., 23‑19‑110 et seq.

Library References

War and National Emergency 1339 to 1351.

Westlaw Topic No. 402.

C.J.S. War and National Defense Sections 76 to 79.

**SECTION 16‑7‑30.** Powers of national guardsmen.

 Members of the South Carolina National Guard shall have the powers of peace officers when they are (1) called or ordered into active State service by the Governor pursuant to Sections 25‑1‑1840, 25‑1‑1860 and 25‑1‑1890, (2) serving within the area wherein military assistance is required, and (3) directly assisting civil authorities. Any person arrested or taken into custody by a member of the Guard, under the provisions of this section, shall be dealt with as required by law of peace officers. No person arrested and taken into custody, under no circumstances, shall be detained or confined at any military installation.

HISTORY: 1962 Code Section 16‑173; 1968 (55) 2741.

CROSS REFERENCES

State Guard, see Section 25‑3‑10 et seq.

Library References

Militia 7.

War and National Emergency 1341.

Westlaw Topic Nos. 259, 402.

C.J.S. Armed Services Sections 341, 344.

Attorney General’s Opinions

Members of the South Carolina National Guard when they are ordered into active service by the Governor are authorized by State law to make arrests of persons, during periods of emergency declared by the Governor in the same manner as peace officers. 1970‑71 Op.Atty.Gen., No 3091, p 34 (1971 WL 17466).

**SECTION 16‑7‑40.** Article is cumulative.

 The provisions of this article are cumulative and in addition to existing criminal laws.

HISTORY: 1962 Code Section 16‑174; 1968 (55) 2741.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Constitutional Law Section 24, Powers of the Governor.

ARTICLE 3

Offenses Tending to Breach of Peace

**SECTION 16‑7‑110.** Wearing masks and the like.

 No person over sixteen years of age shall appear or enter upon any lane, walk, alley, street, road, public way or highway of this State or upon the public property of the State or of any municipality or county in this State while wearing a mask or other device which conceals his identity. Nor shall any such person demand entrance or admission to or enter upon the premises or into the enclosure or house of any other person while wearing a mask or device which conceals his identity. Nor shall any such person, while wearing a mask or device which conceals his identity, participate in any meeting or demonstration upon the private property of another unless he shall have first obtained the written permission of the owner and the occupant of such property.

HISTORY: 1962 Code Section 16‑114; 1952 Code Section 16‑114; 1951 (47) 132.

Library References

Disorderly Conduct 120.

Westlaw Topic No. 129.

C.J.S. Disorderly Conduct Sections 1 to 4.

**SECTION 16‑7‑120.** Placing burning or flaming cross in public place.

 It shall be unlawful for any person to place or to cause to be placed in a public place in the State a burning or flaming cross or any manner of exhibit in which a burning or flaming cross, real or simulated, is the whole or a part or to place or cause to be placed on the property of another in the State a burning or flaming cross or any manner of exhibit in which a burning or flaming cross, real or simulated, is the whole or a part, without first obtaining written permission of the owner or occupier of the premises so to do.

HISTORY: 1962 Code Section 16‑116; 1952 Code Section 16‑116; 1951 (47) 132.

Library References

Civil Rights 1808.

Westlaw Topic No. 78.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Extortion, Blackmail, and Threats Section 22, Threats to Frighten.

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1. Validity

Section 16‑7‑120, which prohibits the placement of a burning cross in a public place or on the property of another without permission, is facially unconstitutional under the First Amendment since the statute does not completely prohibit the use of fighting words, but rather prevents only the use of those fighting words symbolically conveyed by a burning cross. State v. Ramsey (S.C. 1993) 311 S.C. 555, 430 S.E.2d 511. Constitutional Law 1834; Threats, Stalking, And Harassment 5

2. New trial

A defendant was not entitled to a new trial on the grounds of inconsistent verdicts where he was acquitted of a violation of the cross burning statute, but convicted of aiding and conspiring to communicate a threat concerning an attempt to intimidate any individual by means of an incendiary devise based on evidence that (1) a cross burned in a police chief’s yard was built by the defendant, (2) the chief was intimidated by the burning cross, (3) the cross was arguably an incendiary device, and (4) a threat was communicated to the chief, but not personally by the defendant. State v. Garrett (S.C.App. 1991) 305 S.C. 203, 406 S.E.2d 910.

**SECTION 16‑7‑130.** Exceptions to Sections 16‑7‑110 and 16‑7‑120.

 The provisions of Sections 16‑7‑110 and 16‑7‑120 shall not affect the following:

 (1) Any person wearing traditional holiday costume;

 (2) Any person engaged in a trade or employment in which a mask is worn for the purpose of ensuring the physical safety of the wearer or because of the nature of the occupation, trade or profession;

 (3) Any person using a mask in a theatrical production or masquerade ball; or

 (4) Any person wearing a gas mask prescribed in a civil defense drill or exercise or in an emergency.

HISTORY: 1962 Code Section 16‑115; 1952 Code Section 16‑115; 1951 (47) 132.

Library References

Civil Rights 1808.

Disorderly Conduct 120.

Westlaw Topic Nos. 78, 129.

C.J.S. Disorderly Conduct Sections 1 to 4.

**SECTION 16‑7‑140.** Violations of Sections 16‑7‑110 and 16‑7‑120.

 A person who violates any provision of Sections 16‑7‑110 and 16‑7‑120 is guilty of a misdemeanor and, upon conviction, must be punished by a fine of not more than five hundred dollars or by imprisonment for a period not to exceed twelve months.

HISTORY: 1962 Code Section 16‑117; 1952 Code Section 16‑117; 1951 (47) 132; 2010 Act No. 237, Section 89, eff June 11, 2010.

Library References

Civil Rights 1809.

Disorderly Conduct 151.

Westlaw Topic Nos. 78, 129.

C.J.S. Disorderly Conduct Sections 12 to 13.

**SECTION 16‑7‑150.** Slander and libel.

 Any person who shall with malicious intent originate, utter, circulate or publish any false statement or matter concerning another the effect of which shall tend to injure such person in his character or reputation shall be guilty of a misdemeanor and, upon conviction therefor, be subject to punishment by fine not to exceed five thousand dollars or by imprisonment for a term not exceeding one year, or by both fine and imprisonment, in the discretion of the court; provided, that nothing herein shall be construed to abridge any right any person may have by way of an action for damages for libel or slander under the existing law.

HISTORY: 1962 Code Section 16‑161; 1952 Code Section 16‑161; 1942 Code Section 1395; 1932 Code Section 1395; Cr. C. ‘22 Section 326; 1912 (27) 775.

CROSS REFERENCES

Answer in libel and slander cases, see Rules of Civil Procedure, Rule 9.

Constitutional provision regarding libel, see SC Const. Art. I, Section 16.

Pleading libel and slander, see Rules of Civil Procedure, Rule 9.

Library References

Libel and Slander 141 to 150.

Westlaw Topic No. 237.

C.J.S. Libel and Slander; Injurious Falsehood Sections 16 to 21.

RESEARCH REFERENCES

ALR Library

192 ALR, Federal 1 , Propriety of Federal Court’s Abstention, Under Railroad Commission of Tex. v. Pullman Co., 312 U.S. 496, 61 S. Ct. 643, 85 L. Ed. 971 (1941), as to Claim Based on First Amendment.

Encyclopedias

S.C. Jur. Libel and Slander Section 115, Elements of Offense.

S.C. Jur. Telecommunications Section 34, Slander and Libel.

NOTES OF DECISIONS

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Validity 1

1. Validity

Section 16‑7‑150 is constitutionally overbroad and vague. Test is whether by its language statute sweeps within ambit speech which is protected by First and Fourteenth Amendments. As starting point, language of statute may be compared and contrasted with prevailing scope of libel contained in applicable US Supreme Court decisions. “Actual malice” standard applies in criminal as well as civil cases when discussion concerns public affairs. No justification exists to preclude application of this standard to criminal prosecutions initiated by public figures claiming to have been defamed. Statute lacks high degree of protection afforded free expression by “actual malice” standard and allows imposition of criminal penalties if no showing that publisher knew information being published was false or had high degree of awareness of its probable falsity, thus, absent such threshold, statute is unconstitutional on face because it would allow prosecution of publishers of false information even if publisher did not know information was false or if it had no reckless disregard of probable falsity. Fitts v. Kolb, 1991, 779 F.Supp. 1502.

2. In general

Evidence existed as to falsity element of claim that store defamed employee when, at store’s request, police arrested employee and led her out of store in handcuffs, given employee’s testimony that arrest was product of malicious attempt by store management to retaliate against her for complaint she had filed against it; employee’s testimony could lead jury to believe that employee was not guilty of allowing customer to leave store without paying for merchandise, as accused, but rather had been set up by store management. Nicholas v. Wal‑Mart Stores, Inc. (C.A.4 (S.C.) 2002) 33 Fed.Appx. 61, 2002 WL 506424, Unreported. Libel And Slander 112(1)

The amount of fine under this section [Code 1962 Section 16‑161] does not act as a limitation upon the amount of punitive damages which may be awarded in a civil action for libel. Rogers v. Florence Printing Co. (S.C. 1958) 233 S.C. 567, 106 S.E.2d 258.

3. Constitutional issues

“Malicious intent” as used in section is not synonymous with “actual malice” standard of First Amendment jurisprudence. “Malicious intent” in statute makes reference to malice in context of state common law of libel, in which it means ill will toward plaintiff or actions taken with conscious indifference towards plaintiff’s rights, and does not satisfy requirement that publisher know information published is false or is being published with reckless disregard of whether statements are false. With this much lower common law malice standard as threshold for sanctions, publishers of erroneous statements that are “inevitable” in free debate may be subjected under state law to criminal punishment even though such publication is immunized from governmental control by Constitution. Statute which permits such is overbroad. Fitts v. Kolb, 1991, 779 F.Supp. 1502.

To extent statute uses term “malice” it is void for vagueness. Ambiguity in term “malice” creates possibility of confusion between common law use of word and New York Times constitutional definition. Fitts v. Kolb, 1991, 779 F.Supp. 1502. Constitutional Law 2176; Libel And Slander 1.5

Phraseology “false statement . . . the effect of which shall tend to injure . . . character or reputation . . .” is not unconstitutionally vague. Fitts v. Kolb, 1991, 779 F.Supp. 1502.

Practice of having jury decide law would violate due process clause of federal Constitution. Fitts v. Kolb, 1991, 779 F.Supp. 1502.

Not all criminal libel statutes are per se unconstitutional. Fitts v. Kolb, 1991, 779 F.Supp. 1502. Constitutional Law 2176; Libel And Slander 1.5

4. Justiciability

(1)Journalists arrested and charged with violations of criminal libel statute, (2) newspaper publisher and class of plaintiffs consisting of persons who spoke, wrote, broadcast, published, or otherwise communicated about public officials or figures or matters, (3) class consisting of persons desiring to hear, read, or receive communications concerning public officials, figures or matters, and (4) voluntary association of newspapers, and civil rights organization, all had standing to challenge constitutionality of criminal libel statute. Fitts v. Kolb, 1991, 779 F.Supp. 1502. Constitutional Law 859

**SECTION 16‑7‑160.** Illegal use of stink bombs or other devices containing foul or offensive odors.

 It is unlawful for a person, other than a peace officer engaged in the discharge of his duty, to place or throw a stink bomb, tear‑gas bomb, smoke bomb, or similar device which contains foul or offensive odors, may inflict injury, or cause fear sufficient to incite a riot or conditions of panic in or in close proximity to a public building, storehouse, theater, stadium, arena, motion picture theater, private residence, boardinghouse, or other building or structure where people lodge, congregate, or reside.

 A person who violates the provisions of this section is guilty of a:

 (1) misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than three thousand dollars, or both.

 (2) felony if he causes serious bodily harm or injury and, upon conviction, must be imprisoned not more than ten years or fined not more than ten thousand dollars, or both. The court may order all or a portion of a fine to be paid to persons injured as a result of the violation to recover necessary medical expenses.

HISTORY: 1962 Code Section 16‑162; 1952 Code Section 16‑162; 1942 Code Section 1177‑1; 1932 (38) 1534; 1933 (38) 137; 1987 Act No. 50 Section 1; 1993 Act No. 184, Section 23.

Library References

Explosives 4, 5.

Westlaw Topic No. 164.

C.J.S. Explosives Sections 13, 20 to 22, 30, 33, 37, 41, 44, 49, 95 to 123.

**SECTION 16‑7‑170.** Entering public building for purpose of destroying records or other property.

 Any person who enters into any private or public school, college or university building, or a public building, for the purpose of destroying records or other property, or destroys or damages records or other property, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than three years.

HISTORY: 1962 Code Section 16‑163; 1969 (56) 318; 1993 Act No. 184, Section 165.

Library References

Records 22.

Westlaw Topic No. 326.

C.J.S. Records Sections 37, 39, 69 to 73.