



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

August 5, 2005

Andy Benke, Town Administrator
Town of Sullivan's Island
P. O. Box 427
Sullivan's Island, South Carolina 29482

Dear Mr. Benke:

In a letter to this office you raised questions regarding the obligations of a municipality to its community, schools, day cares, businesses, etc. as to the presence of a registered sex offender who has moved into a community. You stated that in the situation that generated your question, the town police department was aware of the offender's presence but did not pass the information on to others. You indicated that the police chief did inform his officers of the presence of the offender. You also stated that the town took no action to advise the property owner of the background and prior conviction of the sex offender who was the tenant of the property owner.

The provisions of S.C. Code Ann. §§ 23-3-400 et seq. provide for a sex offender registry in this State.¹ Section 23-3-430 sets forth particular convictions which render an individual a "sex offender". Pursuant to Section 23-3-440, upon the release of a sex offender, the sheriff of the county where an offender intends to reside is notified of the release of that individual. Section 23-2-450 mandates that the offender shall register with the sheriff of the county where he resides.²

As to the public's right to know as to the presence of a sex offender, Section 23-3-490 states that

¹Several amendments to Sections 23-3-400 et seq. were enacted during the recent session of the General Assembly. However, such provisions for the most part do not become effective until January 1, 2006.

²The offender is required to register annually for life and if the offender changes his address, notification or re-registration is required as mandated by Section 23-3-460. Failure to register or provide other notification as required is a criminal offense. See Section 23-3-470.

(A) Information collected for the offender registry is open to public inspection, upon request to the county sheriff. A sheriff must release information regarding persons required to register under this article to a member of the public if the request is made in writing, on a form prescribed by SLED. The sheriff must provide the person making the request with the full names of the registered sex offenders, any aliases, any other identifying physical characteristics, each offender's date of birth, the home address on file, the offense for which the offender was required to register pursuant to Section 23-3-430, and the date, city, and state of conviction. A photocopy of a current photograph must also be provided. The sheriff must provide to a newspaper with general circulation within the county a listing of the registry for publication.

A sheriff who provides the offender registry for publication or a newspaper which publishes the registry, or any portion of it, is not liable and must not be named as a party in an action to recover damages or seek relief for errors or omissions in the publication of the offender registry; however, if the error or omission was done intentionally, with malice, or in bad faith the sheriff or newspaper is not immune from liability.

Such provision further provides that

(B) A person may request on a form prescribed by SLED a list of registered sex offenders residing in a city, county, or zip code zone or a list of all registered sex offenders within the State from SLED. A person may request information regarding a specific person who is required to register under this article from SLED if the person requesting the information provides the name or address of the person about whom the information is sought. SLED shall provide the person making the request with the full names of the requested registered sex offenders, any aliases, any other identifying physical characteristics, each offender's date of birth, the home address on file, the offense for which the offender was required to register pursuant to Section 23-3-430, and the date, city, and state of conviction. The State Law Enforcement Division may charge a reasonable fee to cover the cost of copying and distributing sex offender registry lists as provided for in this section. These funds must be used for the sole purpose of offsetting the cost of providing sex offender registry lists.

(C) Nothing in subsection (A) prohibits a sheriff from disseminating information contained in subsection (A) regarding persons who are required to register under this article if the sheriff or another law enforcement officer has reason to believe the release of this information will deter criminal activity or enhance public safety. The sheriff shall notify the principals of public and private schools, and the administrator of child day care centers and family day care centers of any offender whose address is within one-half mile of the school or business. (emphasis added).

Particular reporting requirements for individuals adjudicated delinquent in family court for particular offenses are provided by subsection (D) of such provision.³

³Such provision states that

(1) If a person has been adjudicated delinquent for committing any of the following offenses, information must be made available to the public pursuant to subsections (A) and (B):

- (a) criminal sexual conduct in the first degree (Section 16-3-652);
- (b) criminal sexual conduct in the second degree (Section 16-3-653);
- (c) criminal sexual conduct with minors, first degree (Section 16-3-655(1));
- (d) criminal sexual conduct with minors, second degree (Section 16-3-655(2) and
- (e) engaging a child for sexual performance (Section 16-3-810);
- (f) producing, directing, or promoting sexual performance by a child (Section 16-3-820); or
- (g) kidnapping (Section 16-3-910).

(2) Information shall only be made available, upon request, to victims of or witnesses to the offense, public or private schools, child day care centers, family day care centers, businesses or organizations that primarily serve children, women, or vulnerable adults, as defined in Section 43-35-10(11), for persons adjudicated delinquent for committing any of the following offenses:

- (a) criminal sexual conduct in the third degree (Section 16-3-654);
- (b) criminal sexual conduct: assaults with intent to commit (Section 16-3-656);
- (c) criminal sexual conduct with a minor: assaults with intent to commit (Section 16-3-656);
- (d) committing or attempting lewd act upon child under sixteen (Section 16-15-140);
- (e) peeping (Section 16-17-470);
- (f) incest (Section 16-15-20);
- (g) buggery (Section 16-15-120);
- (h) violations of Article 3, Chapter 15 of Title 16 involving a minor, which violations are felonies; or
- (i) indecent exposure.

(3) A person who is under twelve years of age at the time of his adjudication, conviction, guilty plea, or plea of nolo contendere for a first offense of any offense listed in Section 23-3-430(C) shall be required to register pursuant to the provisions of this chapter; however, the person's name or any other information

(continued...)

You particularly commented that the Town police department knew of the offender's presence but did not pass this information to a school or nursery. Also, you stated that the town took no action to advise the property owner of the background or previous conviction of the tenant. You also indicated that you would like to be advised as to any responsibility on the part of the town as to public awareness of an offender.

As referenced by Section 23-3-490, the sex offender registry is open for public inspection upon request to the county sheriff in the manner specified. It is also provided that "(t)he sheriff must provide to a newspaper with general circulation within the county a listing of the registry for publication." Also, pursuant to subsection (B), an individual may request a list of registered sex offenders residing in a particular area or information regarding a particular individual required to register as a sex offender. Pursuant to subsection (C), it is specifically provided that nothing

...prohibits a sheriff from disseminating information contained in subsection (A) regarding persons who are required to register under this article if the sheriff or another law enforcement officer has reason to believe the release of this information will deter criminal activity or enhance public safety. The sheriff shall notify the principals of public and private schools, and the administrator of child day care centers and family day care centers of any offender whose address is within one-half mile of the school or business. (emphasis added).

³(...continued)

collected for the offender registry shall not be made available to the public.

(4) A person who is under twelve years of age at the time of his adjudication, conviction, guilty plea, or plea of nolo contendere for any offense listed in Section 23-3-430(C) and who has a prior adjudication, conviction, guilty plea, or plea of nolo contendere for any offense listed in Section 23-3-430(C) shall be required to register pursuant to the provisions of this chapter, and all registry information concerning that person shall be made available to the public pursuant to items (1) and (2).

(5) Nothing in this section shall prohibit the dissemination of all registry information to law enforcement.

(E) For purposes of this section, use of computerized or electronic transmission of data or other electronic or similar means is permitted.

Mr. Benke
Page 5
August 5, 2005

Therefore, there is no prohibition on the part of the sheriff providing information as to individuals required to register if he believes such "will deter criminal activity or enhance public safety." However, there is the mandatory duty on the part of a sheriff to inform principals of schools and child day care centers and family care day center principals of any offender residing within one half mile to the school or business. The statutes do not speak to any specific responsibility on the part of a town police chief or members of a town police department to make available or relay information regarding a sex offender inasmuch as the statutory responsibility is given to the county sheriff. However, as noted, the referenced provision does allow dissemination if "another law enforcement officer" believes such information "will deter criminal activity or enhance public safety". Consistent with such, in my opinion, a town police officer would be authorized to request of the sheriff the dissemination of information regarding an offender's presence. However, again only a sheriff is statutorily required to notify principals of schools and administrators of child care centers and family day care centers of the presence of an offender within one-half mile of the school or business. There is no separate duty to report to a property owner as to a tenant's status as a sexual offender.

You have also asked whether the particulars of an arrest, trial/conviction, incarceration, release and parole are matters of public record. Prior opinions of this office had determined that arrest warrants, once served, are matters of public record. See, e.g., Ops. Atty. Gen. dated January 10, 2002 and January 10, 2001. The January, 2001 opinion stated that:

Arrest warrants have been deemed disclosable under the Freedom of Information Act...(However)...information contained in an arrest warrant which would be exempted from disclosure by statutes such as Sections 30-4-40, 30-4-70 or others may be deleted prior to disclosure. The basis for disclosure of arrest warrants generally is that an "arrest warrant becomes a matter of public record upon its being signed and served upon the person charged in the warrant."....

The particulars of a trial and the resulting conviction are also matters of public record. See 6th Amendment to the United States Constitution; State v. Allen, 276 S.C. 412, 279 S.E.2d 365 (1981); Ops. Atty. Gen. dated January 10, 2001; April 10, 1995; and May 27, 1980. This office in an opinion dated January 24, 1990 opinion stated that:

...convictions and sentences are matters of public record specifically subject to disclosure under Section 30-4-50(3) of the Code...That Code section declares to be public information: "Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases." It is submitted that the conviction of an individual in a court of law is a final order within the purview of the aforementioned statutory provision...The public is entitled to know of the disposition of an individual's case which has resulted in conviction, thus such information is not exempt...It is noted that pronouncements of a verdict and sentence, upon conviction, are made in open court in the presence of the defendant and others, media and the

Mr. Benke
Page 6
August 5, 2005

public included. Such information would be readily available from the appropriate clerk of court....

As to your question of whether matters of incarceration are public information, the State Supreme Court ruled in Florence Morning News v. Building Commission of City and County of Florence, 265 S.C. 389, 218 S.E.2d 881 (1975) that a jail book and log are matters of the public record. The January 24, 1990 opinion previously referenced noted that pursuant to the referenced case, an interested individual has the right to inspect and copy the original jail book rather than a copy of the daily entries. The opinion further commented that "(t)hus, information as to arrest and charges of a given individual would be available to the public in this fashion." An opinion of this office dated April 10, 1995 commented that criminal records, including the period of imprisonment, is public information. Additionally, as to individuals incarcerated, S.C. Code Ann. § 30-4-30(3) states that among the records of a public body open for public inspection are "documents identifying persons confined in any jail, detention center, or prison for the preceding three months." Therefore, in my opinion, names of individuals confined in a jail or prison are accessible to the public in such circumstances.

As to information regarding the release of any prisoner, I am unaware of any statute or regulation that makes such information confidential. As noted above, the matter of the sentence imposed upon a prisoner is a matter of public information and, of course, state statutory provisions outlining the particular punishment for a particular crime are matters of the public record. As a result, the matter of a prisoner's release could be easily calculated by such public information. Also, by analogy, provisions regarding the sex offender registry requires that a sex offender must register within one day of release from the Department of Corrections. That information, precipitated by registration following the prisoner's release is, of course, public information. See: Sections 23-3-440 and 23-3-490. Consistent with such, in my opinion, information as to the release of a prisoner is public information.⁴

You additionally questioned whether the particulars of the parole of an individual are matters of public record. An opinion of this office dated October 30, 1985 noted that other jurisdictions have determined that the jurisdiction's equivalent of a parole board is subject to freedom of information

⁴The only provision that I found relating specifically to the matter of prisoner records being public information is S.C. Code Ann. § 24-21-640 which states:

Any part or all of a prisoner's in-prison disciplinary records and, with the prisoner's consent, records involving all awards, honors, earned work credits and educational credits, are subject to the Freedom of Information Act as contained in Chapter 4 of Title 30.

Mr. Benke
Page 7
August 5, 2005

laws. That opinion concluded that the parole board in this State "...would be a 'public body' and thus subject to this State's Freedom of Information laws." It further concluded that meetings of a parole board would be subject to the Freedom of Information Act. As a result, its meetings must be open to the public except, of course, for limited reasons for which an executive session may be held. See: S.C. Code Ann. § 30-4-70. Consistent with such, in my opinion, the particulars of the parole of an individual would then be matters of the public record.

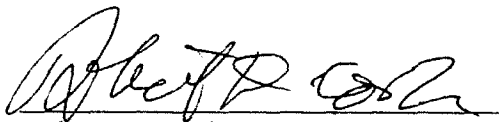
If there are any further questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General