



HENRY McMASTER
ATTORNEY GENERAL

October 14, 2010

Ms. Natalie H. Spires
Sex Offender Registry Coordinator
South Carolina Law Enforcement Division
P. O. Box 21398
Columbia, South Carolina 29221-1398

Dear Ms. Spires:

In a letter to this office you referenced a provision of Act No. 212 of 2010 which states in Section 23-3-460(B),

[a] person classified as a Tier III offender by Title I of the federal Adam Walsh Child Protection and Safety Act of 2006 (Pub. L. 109-248), the Sex Offender Registration and Notification Act (SORNA), is required to register every ninety days.

You have questioned whether individuals who formerly only had to register biannually can now be required to register every ninety days if they come within the referenced classification.

In State v. Walls, 348 S.C. 26, 30, 558 S.E.2d 524, 525-526 (2002), the South Carolina Supreme Court stated that

The United States and South Carolina Constitutions specifically prohibit the passage of *ex post facto* laws. State v. Wilson, 315 S.C. 289, 433 S.E.2d 864 (1993) (citing U.S. Const. art. 1, § 10; S.C. Const. art. 1, § 4). For a law to fall within *ex post facto* prohibitions, two critical elements must be present. First, the law must be retroactive so as to apply to events occurring before its enactment. Second, the law must disadvantage the offender affected by it. State v. Wilson, supra. See also Jernigan v. State, 340 S.C. 256, 531 S.E.2d 507 (2000) (*ex post facto* violation occurs when a change in the law retroactively alters definition of crime or increases punishment for crime). For the *ex post facto* clause to be applicable, the statute or the provision in question must be criminal or penal in purpose and nature. State v. Huiett, 302 S.C. 169, 394 S.E.2d 486 (1990) (citing Flemming v. Nestor, 363 U.S. 603, 80 S.Ct. 1367, 4 L.Ed.2d 1435 (1960)).

The Supreme Court determined that this State's Sex Offender Registry Act (hereinafter "the Act"), S.C. Code Ann. §§ 24-3-400 et seq., met the first prong of an *ex post facto* prohibition in that it was retroactive, i.e., it applied to a defendant whose offense was committed prior to the enactment of the Act. However, the Court further determined that

...it is clear the General Assembly did not intend to punish sex offenders, but instead intended to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes. Hence, the language indicates the General Assembly's intention to create a non-punitive act. We find the Act is not so punitive in purpose or effect as to constitute a criminal penalty. Accordingly, the Act does not violate the *ex post facto* clauses of the state or federal constitutions.

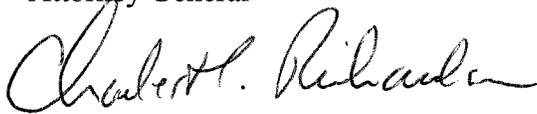
348 S.C. at 31.

Consistent with the above, in the opinion of this office, it would not be an *ex post facto* prohibition to require an individual who formerly had to register biannually to now register every ninety days if he or she comes within the category of an individual classified as a Tier III offender as set forth above.

If there are any questions, please advise.

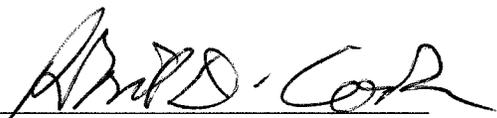
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General