



ALAN WILSON
ATTORNEY GENERAL

March 30, 2011

Captain Daniel Watson
Darlington City Police
400 Pearl Street
Darlington, SC 29532

Dear Captain Watson:

We received your letter requesting an opinion of this Office concerning registered sex offenders living within the City of Darlington. You asked "whether or not there is any reason law enforcement cannot check on registered sex offenders who live in a municipality."

As background, you provided that the Darlington Police Department is cooperating with the sheriff's office in your county to check on the offenders twice a month to make sure that they are continuing to stay at the residence that they have reported on the registry. You also provided that you check on the offenders during a reasonable hour when you go to their residence and that you do not require the offenders to do anything above what they are currently ordered to do by law.

Law/Analysis

In an opinion of this Office dated January 7, 2008, we explained as follows:

South Carolina's sex offender registry is codified at S.C. Code Ann. §§ 23-3-400. Our Supreme Court has described the legislation creating the registry as follows:

[t]he Act mandates that [convicted sex offenders] register as a sex offender in South Carolina for life. S.C. Code Ann. § 23-3-460; See, South Carolina Sex Offender Registry at <http://www.sled.state.sc.us>. The **online registry provides information like sex, age, height, and weight** to help identify the offender. It also includes the **offender's last reported address** and the sex offense he committed.

Hendrix v. Taylor, 353 S.C. 542, 546, 579 S.E.2d 320, 322 (2003). One **purpose of the registry is to "provide law enforcement the tools needed in investigating criminal offenses."** Moreover, such provision's intent is "to **provide for the public health, welfare and safety of its citizens.**" Hendrix, 353 S.C., Id. at 550, 579 S.E.2d, Id. at 324. In Hendrix, the Court upheld the Registry Act as constitutional against due process and equal protection challenges. Decisions of our Court have also rejected other constitutional

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challenges as well. See, State v. Walls, 348 S.C. 26, 558 S.E.524 (2002) [Sex Offender Registry Act does not violate Ex Post Facto Clause when defendant was required to register 25 years after committing the offense]; In the Interest of Ronnie A., 355 S.C. 407, 585 S.E.2d 311 (2003) [juvenile's due process rights were not violated by requirement that he register as sex offender].

Op. S.C. Atty. Gen., January 7, 2008 (emphasis added).

In an opinion of this Office dated April 21, 2003, we further articulated the Act's purpose as follows:

The General Assembly has expressed that the **purpose of the Act is**, among other things, to **aid law enforcement in gaining "... information about these convicted offenders who live within the law enforcement agency's jurisdiction."** The General Assembly has also provided that the State Law Enforcement Division is to operate the Sex Offender Registry. Section 23-3-410 states that "[t]he registry is under the direction of the chief of the State Law Enforcement Division (SLED) and *shall contain information the chief considers necessary to assist law enforcement in the location of persons convicted of certain offenses* (emphasis added)." Obviously, the **ability of law enforcement to locate convicted sex offenders was a primary concern** of the General Assembly in passing the Act.

Op. S.C. Atty. Gen., April 21, 2003 (emphasis added).

S.C. Code § 23-3-400 specifically states the purpose and motivation for the establishment of the Sex Offender Registry:

The intent of this article is to promote the state's fundamental right to provide for the public health, welfare, and safety of its citizens. Notwithstanding this legitimate state purpose, these **provisions are not intended to violate the guaranteed constitutional rights of those who have violated our nation's laws.**

The sex offender registry will provide law enforcement with the tools needed in **investigating criminal offenses. Statistics show that sex offenders often pose a high risk of re-offending. Additionally, law enforcement's efforts to protect communities, conduct investigations, and apprehend offenders** who commit sex offenses are impaired by the lack of information about these convicted offenders who live within the law enforcement agency's jurisdiction.

S.C. Code § 23-3-400 (emphasis added).

"If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning. The words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limit or expand the statute's operation." Strickland v. Strickland, 375 S.C. 76, 88-89, 650 S.E.2d 465, 472 (2007); S.C. Atty. Gen., June 13, 2008.

The statute is clear that the purpose of the Sex Offender Registry is not punitive in nature, but the purpose is to maintain such information to "protect communities, conduct investigations, and apprehend offenders." In Williams v. State, the South Carolina Court of Appeals affirmed that "[r]egistration on the sexual offender registry is not intended to punish sex offenders, but rather the purpose of requiring registration is to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes." Williams, 378 S.C. 511, 662 S.E.2d 615 (2008).

S.C. Code §§ 23-3-440 - 460 provides instructions for offenders regarding how and when they should register. Specifically, S.C. Code § 23-3-450 provides that:

The offender shall register with the sheriff of each county in which he resides, owns real property, is employed, or attends, is enrolled, volunteers, interns, or carries on a vocation at any public or private school, including, but not limited to, a secondary school, adult education school, college or university, and any vocational, technical, or occupational school. To register, the offender must provide information as prescribed by SLED. **The sheriff in the county in which the offender resides . . . shall forward all required registration information to SLED within three business days. A copy of this information must be kept by the sheriff's department. The county sheriff shall ensure that all information required by SLED is secured and shall establish specific times of the day during which an offender may register. An offender shall not be considered to have registered until all information prescribed by SLED has been provided to the sheriff.** The sheriff in the county in which the offender resides . . . shall notify all local law enforcement agencies, including college or university law enforcement agencies, within three business days of an offender who resides . . . within the local law enforcement agency's jurisdiction.

S.C. Code § 23-3-450.

While SLED is given the authority to "promulgate regulations to implement the provisions of this article,¹" the sheriff's department must secure all required information from the offenders and notify all local law enforcement agencies where an offender resides. To best fulfill the purpose of the registry: providing for the public health, welfare and safety of its citizens, local law

¹ S.C. Code § 23-3-420

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enforcement and the sheriff's department has implicit authority to ensure that the information SLED receives is accurate and complete.

In Rogers v. Pendleton, 249 F.3d 279, 289-90 (4th Cir. 2001), the Fourth Circuit Court of Appeals held that police may approach the door of a residence to "knock and talk," seeking to speak to the inhabitants, without probable cause, a warrant, or exigency. Additionally, police have a community caretaking function that has been upheld as valid and not in violation of the Fourth Amendment. See, United States v. Rodriguez-Morales, 929 F.2d 780, 786-87 (1st Cir. 1991) ("the need for police to function as community caretakers arises fortuitously, when unexpected circumstances present some transient hazard which must be dealt with on the spot"); United States v. Bell, 2002 WL 171742 (E.D.Pa. 2002) ("so long as such caretaking activities are warranted, either in terms of state law or sound police procedure, they do not offend the fourth amendment"). With these concepts in mind from the First and Fourth Circuit and U.S. District Court, one can logically find that it is within an officer's general authority to visit a place of residence for a reasonable purpose. It is the opinion of this Office that an officer visiting an offender's residence to ensure that registry information is correct would be considered a reasonable purpose.

The Fourth Amendment is designed "to prevent arbitrary and oppressive interference by enforcement officials with privacy and personal security of individuals." State v. Foster, 269 S.C. 373, 237 S.E.2d 589, 592 (1977); State v. Butler, 353 S.C. 383, 577 S.E.2d 498, 501 (Ct. App. 2003). Visiting an offender's residence during a reasonable hour where no requirement is imposed beyond what the offender is currently ordered to do by law would not likely be found to be arbitrary or oppressive interference. In light of the purpose of the registry and the general law enforcement authority provided to police officers, it appears that local law enforcement may check on offenders twice a month to ensure proper information is provided to SLED and to ensure that the purpose of the registry is accomplished.

You specifically asked whether the Darlington City Police, in cooperation with the sheriff's office may check on registered sex offenders within the municipality twice a month. The request letter states that the police department would visit the residence "during a reasonable hour" and that there would be "no requirement for [the offenders] to do anything above what they are currently ordered to do by law." It appears that, in compliance with the sex offender registry statutes, there is nothing punitive in nature that would take place as a result of the visits. Therefore, a court would likely find that these visits are permissible within the authority provided in the sex offender registry statutes and within general law enforcement authority as community caretakers.

Conclusion

It is the opinion of this Office that, under S.C. Code § 23-3-450 and general law enforcement authority as discussed above, local police departments, in conjunction with the sheriff's office

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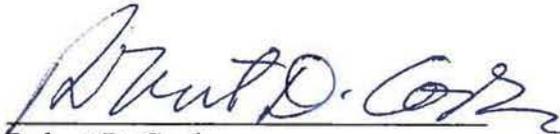
would have the authority to visit residences of offenders during a reasonable hour. Such precautions assist in promoting the goals of Article 7, Chapter 3, Title 23. Visiting the offender's residence twice a month to ensure that he or she is living at the residence reported on the registry allows local law enforcement officers to assist in maintaining a more accurate registry. It is the opinion of this Office that the City of Darlington Police Department has authority to conduct such visits.

Sincerely,



Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General