

7217 *Letter*



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

August 27, 2001

The Honorable Richard M. Quinn, Jr.
Majority Leader
South Carolina House of Representatives
1620 Gervais Street
Columbia, South Carolina 29201

Dear Representative Quinn:

You have raised several questions dealing with Proviso 72.95 (GP: State Funded Libraries - Web Filters) of the Annual Appropriations Act that was enacted on July 1, 2001. Your questions are stated as follows:

[i]n reference to Proviso 72.95, what constitutes a library? Is the State Library covered under this definition? Is Proviso 72.95 mandatory? If so, what is the effective date of compliance? What is the effect of non-compliance with this proviso? Can you isolate the one unfiltered computer that is permitted pursuant to Proviso 72.95?

LAW / ANALYSIS

Proviso 72.95 of the 2001-2002 Appropriations Act provides as follows:

[a] library receiving state funds, directly, indirectly, by grant, or otherwise, other than a library at an institution of higher learning, that has computers available for use by the public or students, or both, must equip these computers with software incorporating web-filtering technology designed to eliminate or reduce the ability of the computer to access sites displaying pornographic pictures or text. However, up to ten percent, and at least one, of the library's computers must be unfiltered. The library also must have a written policy providing sanctions against a person who instructs or demonstrates to another person how to bypass this web-filtering technology.

(B) State funds intended for a library not in compliance with subsection (A) must be reduced by fifty percent. Funds resulting

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against a person who instructs or demonstrates to another person how to bypass this web-filtering technology.” Further, the Proviso mandates, pursuant to Subsection (B), that “State funds intended for a library not in compliance with subsection (A) must be reduced by fifty percent. Funds resulting from this reduction must be distributed among other libraries that are in compliance with subsection (A).” (emphasis added). Thus, it is clear that the Proviso makes mandatory the duty of every library to install Internet filters.

IF SO, WHAT IS THE EFFECTIVE DATE FOR COMPLIANCE?

The Proviso went into effect immediately upon approval by the Governor. At the end of Part I of the 2001-2002 Appropriations Act, the General Assembly stated that “[e]xcept as otherwise specifically provided, this act takes effect immediately upon its approval by the Governor.” Nothing in Proviso 72.95 itself delays or otherwise excepts the Proviso from becoming effective upon the Governor’s signature, which, of course, occurred in late June. There is no “grace period” contained in the Proviso. Accordingly, the Proviso went into effect immediately. It is in effect now.

WHAT IS THE EFFECT OF NON-COMPLIANCE WITH THIS PROVISOR?

As noted above, a library which fails to comply with subsection (A) requiring Internet filters forfeits the State funds it receives by fifty percent. Those State funds forfeited must be distributed among other libraries that are in compliance with the Internet filter requirement.

CAN YOU ISOLATE ONE UNFILTERED COMPUTER THAT IS PERMITTED PURSUANT TO PROVISOR 72.95?

Yes. The statute only requires that “up to ten percent, and at least one, of the library’s computers must be unfiltered.” The physical location of an unfiltered computer, as mandated by the Proviso, is left to the discretion of library officials.

CONCLUSION

In enacting Proviso 72.95, the General Assembly had as its purpose the elimination of pornography being downloaded over the Internet in public libraries. While the Internet is a powerful learning tool for children, it also presents substantial dangers to young people. The General Assembly recognized the concern that taxpayers not spend their hard earned tax dollars subsidizing the dissemination of pornography in public libraries. Thus, the Legislature has mandated that libraries receiving state funds must use Internet filters to shield patrons from being exposed to the Internet’s seedy, salacious side. In response to your specific questions, we advise:

1. Proviso 72.95 must be construed broadly to effectuate the Legislature’s clear purpose in eliminating Internet pornography in public libraries. The Proviso mandates that at least one computer and up to 10% of computers at each library be exempted from filtering. In this

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regard, for purpose of computation of the number of unfiltered computers, we construe the word "library," used in the Proviso, as not being limited to particular library buildings or branches, but as covering the entire county library system. In other words, if each branch of the county library system could exempt at least one computer, or up to 10% of its computers from the requirement of Internet filters, such could result in those branches which offer to the public only one computer to have that computer unfiltered. Such an interpretation is not in accord with the legislative purpose of filtering as many computers in the library as possible. Thus, the better reading of the Proviso, and the one more in accord with the Legislature's purpose of filtering as many computers in the library as possible, is to construe the word "library" as not constituting the building or branch, but the entire county library system.

2. The State Library is covered by the Proviso.
3. The Proviso is mandatory.
4. The effective date of the Proviso was in late June upon the Governor's signature. The Proviso is now in effect.
5. The effect of non-compliance with the Proviso is reduction of state funds received by fifty percent and the distribution of those funds forfeited to the libraries which are in compliance.
6. The governing authorities of a library would have the discretion to isolate the unfiltered computer away from the public.

Pornographic smut anywhere is undesirable, but in the local library where our children visit it is intolerable. The public library is a haven of knowledge, not a house for x-rated filth. The Legislature has said quite clearly to citizens: if it is pornography you are looking for, look somewhere besides our libraries. This legislation imposed upon libraries, including the State Library, the mandatory duty to filter the Internet, or lose half the state money that is being received.

Sincerely,



Charlie Condon
Attorney General

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