

1979 WL 42774 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 23, 1979

*1 Hon. Michael S. Gullledge
S. C. House of Representatives
Post Office Box 339
Abbeville, South Carolina 29620

Dear Mr. Gullledge:

You requested an opinion as to whether Abbeville High School officials could use police 'sniff' dogs to make periodic checks of student lockers in an effort to curtail possible storage of drugs in these lockers on school premises. It is the opinion of this Office that they may do so.

The Fourth Amendment to the United States Constitution prevents unreasonable searches. The first question to be addressed is whether the Fourth Amendment is even applicable in this situation. A number of courts have held that since a student does not enjoy an exclusive right to possession of the locker—i.e., school officials either had a master key to the locker or the student was required to give officials the combination to the lock the student placed on the locker—he had no reasonable expectation of privacy in the locker and, therefore, a person sharing possession (the principal) could consent to a search of the locker. [People v. Overton](#), 283 N.Y.S. 2d 22, 229 N.E. 2d 596 (1967), adhered to on reh. 301 N.Y.S. 2d 479, 249 N.E. 2d 366; [Re Donaldson](#), 269 Cal. App. 2d 509, 75 Cal. Rptr. 220 (1969); [State v. Stein](#), 203 Kan. 638, 456 P. 2d 1 (1969), cert. den. 397 U.S. 947, 90 S. Ct. 966. Thus, on this basis alone, school officials could consent to a search by police officers who accompany sniff dogs down hallways where lockers are located. This assumes, however, that school officials normally have access to the lockers. If they do not, the use of dogs may still be available as is discussed below. If they do have access, this Office, in an abundance of caution, advises you that before the dogs are brought in, students should be notified that, henceforth, their lockers will be subject to being sniffed by trained dogs and to being searched by school officials if circumstances warrant. This insures that a student so notified could not claim he did not know his right to possession of the locker was nonexclusive and also makes unreasonable any expectation on his part of privacy regarding the contents of his locker.

Assuming the Fourth Amendment were applicable to this situation, dogs still could be used since many cases hold that the mere sniffing of the air by trained dogs is not prohibited search within the meaning of the Fourth Amendment. [U.S. v. Venema](#), 563 F. 2d 1003 (10th Cir., 1977); [U.S. v. Solis](#), 536 F. 2d 880 (9th Cir., 1976); [U.S. v. Bronstein](#), 521 F. 2d 459 (2d Cir., 1975); [U.S. v. Fulero](#), 498 F. 2d 748 (D.C. Cir., 1974); [State v. Quatsling](#), 24 Ariz. App. 105, 536, P. 2d 226 (1975); [People v. Campbell](#), 67 Ill. 2d 308, 367 N.E. 2d 949 (1977). Some of these cases base their holdings on the view that sniffing is not a 'search' within the Fourth Amendment's meaning, while others assume there was a search, but that the search was 'reasonable' at any rate and therefore not prohibited by the Fourth Amendment. Obviously, the search you have in mind will likely fit under one of these two views; so, from a practical standpoint, it makes no difference which one supplies the justification.

*2 The only possible problem with the procedure you contemplate is that it will be, in a general essence, a general 'sniffing expedition,' meaning that no particular locker or group of lockers is the object of the sniffing. In the cases cited above, the sniffing was directed at one or two particular individuals and was preceded by at least a reasonable suspicion that contraband would be discovered. Here, the suspicion is unfocused. It is directed at all student lockers in general.

However, the ultimate question is whether this procedure is reasonable under all the facts and circumstances. Under the theory that school officials act in loco parentis to students surrendered to their care, the procedure used would be reasonable. In loco

parentis stands for the proposition that the parent specifically has delegated his authority to the teacher or school official so that he may restrain and correct deviant behavior in the interest of all the students at a school just as the parent could:

The school authorities have an obligation to maintain discipline over the students. It is recognized that, when large numbers of teenagers are gathered together in such an environment, their inexperience and lack of mature judgment can often create hazards to each other. Parents, who surrender their children to this type of environment, in order that they may continue developing both intellectually and socially, have a right to expect certain safeguards.

It is in the high school years particularly that parents are justifiably concerned that their children not become accustomed to antisocial behavior, such as the use of illegal drugs.

People v. Overton, *supra*, 229 N.E. at 597.

Thus, the peculiar and distinct relationship existing between students and school authorities and the concern for the students' safety make this procedure reasonable even though it involves a random, unfocused quest for illegal drugs.

Again, I emphasize the propriety of notifying students that henceforth their lockers will be subject to being sniffed by drug detecting dogs. The reason for this is that no case has been discovered where the propriety of this particular procedure involving student lockers has been passed on. Although the above cited cases are analogous to this situation, they are not directly on point. Further, warning the students should accomplish your purpose—it should result in getting illegal drugs out of the schools. Students ignoring the warning then would have no basis on which to complain were they subsequently prosecuted for disobeying the warning.

Therefore, it is the opinion of this Office that 'sniff' dogs may be employed by school officials in order to monitor the air around high school students' lockers for the purpose of detecting illegally stored drugs.

Sincerely,

Joseph R. Barker
Assistant Attorney General

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