



HENRY McMASTER
ATTORNEY GENERAL

June 28, 2010

Jamie P. Ham, Chief of Police
Blacksburg Police Department
Post Office Box 517
Blacksburg, South Carolina 29702

Dear Chief Ham:

In a letter to this office you questioned whether there can be recording of audio in government facilities or buildings in areas where the public has unrestricted access.

A prior opinion of this office dated June 10, 1997 stated that

[t]he federal wiretap law prohibits a person from intentionally intercepting, endeavoring to intercept or procuring any other person to intercept or endeavor to intercept “any wire, oral or electronic communication.” 18 U.S.C. § 2511(1)(a). The Act defines “wire communication” as “any aural transfer made ... through the use of facilities for the transmission of communication by the aid of wire, cable, or other like connection between the point of origin and the point of reception” 18 U.S.C. § 2510(1). The term “oral communication” is defined by the Act as “any oral communication uttered by a person exhibiting an expectation that such communication is not subject to interception under circumstances justifying such expectation” (emphasis added).

That opinion further stated that

[i]t is well recognized that “there is an accepted loss of privacy when one occupies a public place.” U.S. v. Mankani, 738 F.2d 538, 544 (2d Cir.1984). Courts have consistently concluded that in common areas...there is no reasonable expectation of privacy. See, State v. Boynton, 688 A.2d 145, 147 (N.J. 1997); People v. Lillis, 448 N.W.2d 818 (Mich.1989); State v. Holt, 630 P.2d 854 (Or. 1981).

Consistent with such, in the opinion of this office, there would be no prohibition to the recording of audio in government facilities or buildings in areas where the public has unrestricted

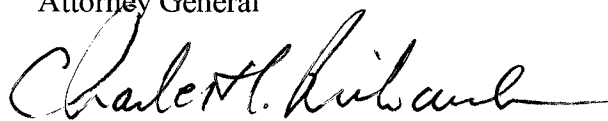
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access. In the opinion of this office, there is no expectation of privacy in such areas and, therefore, the recording of audio in such areas would be authorized. I would only suggest that signs be posted advising the public of such recording to put them on notice that recording is taking place.

With kind regards, I am,

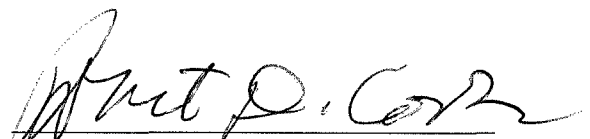
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General