

1984 S.C. Op. Atty. Gen. 247 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-106, 1984 WL 159913

Office of the Attorney General

State of South Carolina

Opinion No. 84-106

August 28, 1984

*1 Honorable Harry W. Davis, Jr.
Commissioner
South Carolina Department of Youth Services
Post Office Box 7367
Columbia, South Carolina 29202

Dear Commissioner Davis:

You have inquired about the use of canines trained to locate drugs in ‘blanket’ searches of institutions and facilities operated by your Department. You have indicated specific concern with the use of these animals in light of the fact that such action will be directed toward discovery of drugs in an institution which houses juveniles and are, technically, schools.

In response to your concern, and although I recognize that the Department of Youth Services is a designated school district, [§ 20–7–3240 S.C. Code, Ann. \(1983 Cum. Supp.\)](#), for the purposes of analyzing and responding to your inquiry, the Department of Youth Services should be first considered as a correctional institution, [§ 20–7–3230, s.c. Code, Ann. \(1983 Cum. Supp.\)](#).

Prison discipline, security, and safety, whether dealing with adult prisons or juvenile institutions is uniformly recognized as being essential. In order to achieve these aims, certain rights of inmates must, out of necessity, be curtailed, [U.S. Ex Rel. Wakeley v. Pennsylvania, 247 F. Supp. 7 \(E.D. Pa., 1965\)](#), and for this reason courts, as a general rule, do not intervene in matters of prison discipline, security, or safety, except in most extraordinary of circumstances. [Roberts v. Peppersack, 256 F. Supp. 415 \(D.Md., 1966\)](#).

The need to search for contraband in a prison setting has been repeatedly recognized as a rational response by prison officials to security problems surrounding the smuggling and possession of contraband. In the recent U.S. Supreme Court decision, [Hudson v. Palmer](#), — U.S. —, 35 Criminal Law Reporter 3230 (July 3, 1984), Chief Justice Burger stated that ‘a right of privacy in traditional Fourth Amendment terms is fundamentally incompatible with the close and continual surveillance of inmates and their cells required to insure institutional security and internal order.’ The Supreme Court adopted the approach that ‘random searches of inmates, individually or collectively, and their cells and lockers are valid and necessary to ensure the security of the institution . . . [t]his type of search allows prison officers flexibility and prevents inmates from anticipating and thereby thwarting a search for contraband.’ [Hudson v. Palmer, supra](#), at 3233, citing [Marrero v. Commonwealth, 222 Va. 754, 284 S.E. 2d. 809 \(1981\)](#). The Supreme Court therein held that the Fourth Amendment has no applicability to a prison cell and therefore there was no constitutional violation in the random shakedown search of a prison cell because there is no reasonable expectation of privacy of an inmate to his cell.

While considered offensive to some, the use of ‘drug sniffing’ dogs to locate drugs and other contraband has generally been found by the courts to be less intrusive than other means of detection. Indeed, the use of dogs to locate drugs in baggage at airline terminals has recently been found by the United States Supreme Court to not even constitute a search. [U.S. v. Place, 462 U.S. 696, 103 S.Ct. 2637, 77 L.Ed. 2d 110 \(1983\)](#). Also see [Florida v. Royer](#), — U.S. —, 103 S.Ct. 1319, 75 L.Ed. 2d 229 (1983) and [U.S. v. Beale, 462 U.S. —, 103 S.Ct. 3529, 77 L.Ed. 2d 1382 \(1983\)](#).

*2 Therefore, it is my opinion that since a prison inmate has no reasonable expectation of privacy in his prison cell, a juvenile delinquent has no reasonable expectation of privacy in his institutional residence pursuant to court commitment at the

Department of Youth Services. Furthermore, case law holds that a 'canine sniff' by a well-trained narcotics detection dog, a procedure so limited both in the manner in which the information is obtained and in the content of the information revealed by the procedure, does not constitute a 'search' within the Fourth Amendment. The canine sniff does not involve the opening of luggage nor exposure of noncontraband items that otherwise would remain hidden from public view. The sniff discloses only the presence or absence of narcotics, a contraband item. See: U.S. v. Place, supra.

If the committed juveniles of the Department of Youth Services are considered to be in a school rather than a correctional setting, the use of dogs to search and locate drugs in school lockers and common areas has been generally upheld by the courts, though no South Carolina case is on point. See: Horton v. Goose Creek Independent School District, 690 F.2d. 470, rehearing en banc denied, 693 F.2d. 524 (5th Cir., 1982). In Horton, the Fifth Circuit held that the use of dogs in dragnet sniff-searches of the students themselves however was unconstitutional where the students were sniffed at close proximity or involved the placing of the dog's nose on the student. The court held the intrusion on dignity and personal security that goes with the type of canine inspection of the student's person involved in the case cannot be justified by the need to prevent abuse of drugs and alcohol when there is no individualized articulable suspicion. The court did approve of the dragnet sniffing of the lockers and common areas. Zamora v. Pomeroy, 639 F.2d. 662 (10th Cir. 1981).

You have advised this office that you do not intent to use the canines in the 'school' settings of the institutions. That policy decision must be strongly encouraged because of the pendency in the United States Supreme Court of New Jersey v. T.L.O., No. 83-712. This case involves a vice-principal's warrantless search of a student's purse and the suppression of the evidence by the New Jersey Court and could affect school search law. See: In re T.L.O., 463 A.2d 934 (1983).

In conclusion, it is my opinion that the limited use of drug-sniffing canines is constitutionally proper in searching the institutional facilities, lockers, and common areas. The use of such animals on the juvenile's person, without articulable suspicion of drug possession, is constitutionally unresolved and must be discouraged at this time. We are sure that you recognize that our office cannot make the policy decision on the use of canines in your facilities and nothing in this opinion should be construed as such. These matters must be resolved by the administrators of programs. If you have any questions about this, please feel free to contact me.

Sincerely,

*3 Donald J. Zelenka
Deputy Attorney General

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