ALAN WILSON
ATTORNEY GENERAL

July 8, 2022

The Honorable Jimmy A. Richardson, II, Solicitor
Fifteenth Judicial Circuit
P.O. Box 1276
Conway, SC 29528

Dear Solicitor Richardson:

You note that "[r]ecently Horry County passed an Ordinance [attached] that limits where people who are on the Sex Registry can work." You further state that

> [o]ur local Treasurer, Angie Jones, has been tasked with enforcing this as she has to issue and control Business License[s]. She asked me if the Ordinance was constitutional.
>
> By this letter, I defer to answer but respectfully request an Attorney General's Opinion on the constitutionality of Horry County Ordinance 24-2022.

Since your request was made, the General Assembly enacted H. 4075 in response to the State Supreme Court decision in Powell v. Keel, 433 S.C. 457, 860 S.E.2d 830 (2021), which declared the lifetime requirement of the Sex Offender Registry law (S.C. Code Ann. § 23-3-430), without any opportunity for removal, to be unconstitutional. As part of H. 4075, the Legislature included many of the same prohibitions concerning the involvement of sex offenders in "child-oriented businesses" as are found in the Ordinance. Clearly, the purpose of both enactments is the same – the preclusion of certain sex offenders from working in "child-oriented businesses."

Given these developments regarding the enactment of H. 4075, we recommend that the new State law be followed in lieu of the Ordinance. If so, your question regarding the validity of the Ordinance is rendered moot.

While the amended statute and the Ordinance are not on "all fours" with each other with respect to the prohibition of certain sex offenders working in "child-oriented businesses," they are indeed very similar. The goal of the Ordinance is "to protect minors by prohibiting any person that has been convicted of particular criminal activities, or is required to register as a sex offender from acquiring a business license to operate a child-oriented enterprise, and from working at a child-oriented enterprise. . . ." (emphasis added). These goals closely overlap with

those of H. 4075, which makes it unlawful for a sex offender convicted of certain offenses "to operate, work for, be employed by, or volunteer for a child-oriented business" and providing criminal offenses therefor.

It has long been the policy of this Office "not to issue an opinion on any question which has or will become moot." Op. S.C. Att'y Gen., 1999 WL 1425994 (Oct. 27, 1999). Thus, while the Ordinance is a legislative enactment, and is presumed valid unless set aside by a court, to avoid any possibility of legal uncertainty with respect to enforcement of the Ordinance, we recommend that H. 4075 be followed. See Art. VIII, § 14 of the South Carolina Constitution [general law shall not be set aside by ordinance where general law involves ". . . (6) the structure and administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity. . . ."]. If H. 4075 is enforced, rather than the Ordinance, no question of constitutionality is raised, thereby rendering your question moot. Local officials may enforce the provisions of H. 4075 related to "child-oriented businesses" with the satisfaction of knowing that the overriding purpose of the Ordinance is still being fulfilled. In our view, H. 4075 is constitutional and should be enforced.

Sincerely,

Robert D. Cook
Solicitor General