

September 18, 2007

Major Mark A. Keel, Chief of Staff  
South Carolina Law Enforcement Division  
Post Office Box 21398  
Columbia, South Carolina 29221-1398

Dear Major Keel:

In a letter to this office you requested an opinion regarding the use of juvenile adjudication information that is lawfully collected by SLED. For instance, you referenced that pursuant to S.C. Code Ann. § 20-7-8515(I),

[t]he fingerprint records of a child may be transmitted by the State Law Enforcement Division to the files of the Federal Bureau of Investigation only when the child has been adjudicated delinquent for having committed an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult.

Subsection (J) of such provision states that

[t]he fingerprint records of a child adjudicated delinquent for an offense that would carry a maximum term of imprisonment of five years or more if committed by an adult must be provided by the State Law Enforcement Division or the law enforcement agency who took the child into custody to a law enforcement agency upon request by that agency for criminal justice purposes or to assist the Missing Person Information Center in the location or identification of a missing or runaway child.

You indicated that “[t]he South Carolina Law Enforcement Division has the responsibility to maintain these records and disseminate according to specific laws for authorized criminal justice purposes.”

Major Keel  
Page 2  
September 18, 2007

You also referenced that SLED also flags felony offenses which place certain restrictions on individuals, such as purchasing or owning a firearm. You indicated that these flagged records are also used by the SLED Regulatory Division for review regarding concealed weapons permits and security guard and private detective licensing. You further indicated that the FBI National Instant Check System (NICS) also approves and denies NICS background checks according to felony flags set by SLED. Referencing such, you cited S.C. Code Ann. § 20-7-7805 © which states:

[n]o adjudication by the court of the status of a child is a conviction, nor does the adjudication operate to impose civil disabilities ordinarily resulting from conviction, nor may a child be charged with crime or convicted in a court, except as provided in Section 20-7-7605(6). The disposition made of a child or any evidence given in court does not disqualify the child in a future civil service application or appointment. (emphasis added).

Referencing such provision, you have questioned whether SLED may use juvenile adjudications of guilt to flag juvenile records for felony adjudications which are used for the purposes mentioned in your letter.

As to the restrictions referenced by you, S.C. Code Ann. § 16-23-30(A) states that

[i]t shall be unlawful for any person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange or transport for sale into this State any pistol to:

(1) a person who has been convicted of a crime of violence...

(B) It is unlawful for a person enumerated in subsection (A) to possess or acquire handguns within this State.

As to concealed weapons permits, S.C. Code Ann. § 23-31-215(F)(1) requires that a person applying for such a permit must certify that “he is not a person prohibited under state law from possessing a weapon.”

As to licensing as a private investigator, S.C. Code Ann. § 40-18-70(E)(4) authorizes SLED to issue such a license to a person who, among other criteria, “has not been convicted of a felony...” According to S.C. Code Ann. § 40-18-50(D)(4), SLED may issue a license to an individual seeking a license to engage in the private security business if that individual “...has not been convicted of a felony...” Persons performing the duties of a security officer may be issued a registration certificate if they have “not been convicted of a felony.” See: S.C. Code Ann. § 40-18-80(A)(4). You also stated that “[t]he Federal Bureau of Investigation’s National Instant Check System (NICS) also approves and denies NICS background checks according to the felony flags set by SLED.”

With reference to the language of Section 20-7-7805 © which states that “nor does the adjudication operate to impose civil disabilities ordinarily resulting from conviction”, the South Carolina Supreme Court in its decision in In the Matter of Skinner, 272 S.C. 135, 137, 249 S.E.2d 746 (1978) stated that the language of such provision exemplifies the principle that “(t)he primary purpose of the juvenile process is to exempt an infant from the stigma of a criminal conviction and its attendant detrimental consequences.” A prior opinion of this office dated May 27, 1981 determined that such language is supportive of the principle that an adjudication of delinquency “...should not have the same permanent effect that a conviction for a criminal act would have for an adult....”

Another opinion of this office dated January 14, 1971 dealt with the question of whether a juvenile offender should be eligible to register to vote. The opinion referenced that

[c]oncerning criminal conduct by a juvenile which amounts to the commission of a disqualifying crime, it must be remembered that a juvenile or family court does not operate in the same fashion as a criminal court; and its primary goal or function is rehabilitation rather than punishment.

Reference was made to the provision now codified as Section 20-7-7805(C) in concluding that

...a juvenile adjudged by one of the juvenile or family courts...to be guilty of conduct which would amount to the commission of a disqualifying crime were it before one of the criminal courts of the State would not thereafter be ineligible to register and vote.

As cited in opinions of the Georgia Attorney General dated January 8, 1998 and the California Attorney General dated June 15, 1988, an example of a civil disability that may result from a conviction is the loss of the right to possess a firearm. See also: Lewis v. United States, 445 U.S. 55 (1980) (the government could use a felony conviction which had been uncounseled as the basis for mandating a civil firearms disability which was enforceable by a criminal sanction). In Ballinger v. Thompson, 118 P.3d 429, 435 (Wyo.2005), the Wyoming Supreme Court similarly stated that “[a] civil disability pursuant to a specific disability statute may include the loss of the right to...possess firearms and the denial of professional or occupational licenses.” See also: Lehman v. Pennsylvania State Police, 839 A.2d 265 (Pa. 2003); State v. Johnson, 79 S.W.3d 522 (Tenn. 2002); State v. Trower, 629 N.W.2d 594 (S.D. 2001). In its decision in State v. Adams, 2004 WL 2830793 (Ohio, 2004), the Ohio Court of Appeals gave as an example of a civil disability that may occur when one is labeled a felon is the right to engage in certain occupations. See also: State v. Stewart, 2006 WL 440153 (Ohio, 2006).

Consistent with the above, the loss of the right to possess a firearm, obtain a concealed weapons permit, or to hold a license as a private security guard or a private detective are examples of civil disabilities which might result from convictions for certain offenses. However, as set forth by Section 20-7-7805(C), an adjudication as a juvenile does not “operate to impose civil disabilities ordinarily resulting from conviction”. As a result, in the opinion of this office, Section 20-7-7805(C) would not prevent a juvenile adjudication from keeping an individual from being able to purchase or own a firearm, hold a concealed weapons permit or obtain a license as a private detective or private security guard.

\_\_\_\_\_. Such construction would also be consistent with the ruling by the State Court of Appeals in Brunson v. Stewart, 345 S.C. 283, 547 S.E.2d 504 (Ct.App. 2001) where the Court ruled an applicant’s right to purchase a pistol was restored when he was pardoned. The pardon statute, S.C. Code Ann. § 24-21-990, states that “[a] pardon shall fully restore all civil rights lost as a result of a conviction.” The Court cited the decision in State v. Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000) where the State Supreme Court ruled that the pardon statute “...absolves an individual of ‘all the legal consequences of his crime and of his conviction, direct and collateral.’” 340 S.C. at 344. Similarly, as to juvenile offenders, an adjudication as a juvenile offender does not impose certain civil disabilities which typically result from a conviction.

While a juvenile adjudication would not keep an individual from being able to purchase or own a firearm or to obtain a license as a private detective or security guard, I am unaware of any basis that would prevent SLED from flagging certain records as they pertain to the FBI National Instant Check System (NICS). You indicated that the FBI approves and denies NICS background checks according to felony flags set by SLED. Again, an adjudication as a juvenile offender does not operate to impose civil disabilities, such as those referenced above, regarding possessing a firearm or holding a particular license as a security guard or private detective. However, those juvenile adjudications may be relevant for other purposes. As you referenced, Section 20-7-8515(I) allows the transmitting of fingerprint records to the FBI when a child has been adjudicated delinquent for an offense that would carry a sentence of imprisonment of five years or more if committed by an adult. By subsection (J) of such provision, these fingerprint records may be forwarded to a law enforcement agency for criminal justice purposes or for use in identification and location of a missing person. Additionally, pursuant to S.C. Code Ann. § 20-7-8515(D)

[I]law enforcement information or records of children create pursuant to the provisions of this article may be shared among law enforcement agencies, solicitors’ offices, the Attorney General, the department, the Department of Mental Health, the Department of Corrections, and the Department of Probation, Parole and Pardon Services for criminal justice purposes without a court order.

Major Keel  
Page 5  
September 18, 2007

Therefore, presumably there may be situations where the flagging of felony offenses may be relevant outside of those situations such as those that would be covered by the civil disability distinction. These would be covered on a case by case basis.

If there are any questions, please advise.

Sincerely,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General