



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

April 21, 2003

The Honorable Ralph E. Hoisington
Solicitor, Ninth Judicial Circuit
101 Meeting Street
Charleston, South Carolina 29401

Re: S.C. Code Ann. §§23-3-400 et seq.

Dear Solicitor Hoisington:

You have requested an advisory opinion from this Office regarding S.C. Code Ann. §§23-3-400 et seq., the Sex Offender Registry Act. By way of background, you provide that

...this Act requires those offenders within its purview, to register their "address" in the sheriff's office of their county of "residence." In several of our cases, we have encountered a situation in which the registrant is homeless and has no fixed address. We cannot find either "address" or "residence" defined within this Act ...

Given this background information, you specifically ask the following:

1. Is a registrant, because he has no address or fixed residence, not required to register under this Act?
2. Under this Act, what is an "address" or "residence" for purposes of registration?
3. What would be the appropriate process for such persons (i.e. homeless) to register if they cannot provide an "address" to the sheriff's office?

Each of your questions will be addressed in turn.

LAW/ANALYSIS

Question 1

Section 23-3-430(A) provides in part that "[a]ny person, regardless of age, residing in the State of South Carolina who in this State has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense ... [set out in §23-3-430(C) & (D)] ..., or who has been

Request Y. et al.

convicted, adjudicated delinquent, pled guilty or nolo contendere in any comparable court in the United States, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere in the United States federal courts of a similar offense, or who has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to an offense for which the person was required to register in the state where the conviction or plea occurred, shall be required to register pursuant to the provisions of this article.” Further, Section 23-3-430(B) provides that “[f]or purposes of ... [the Sex Offender Registry Act] ..., a person who remains in this State for a total of thirty days during a twelve-month period is a resident of this State.”

The Sex Offender Registry Act [the “Act”] makes it mandatory for any “... person who remains in this State for a total of thirty days during a twelve-month period ...” to register with the Sheriff of the county in which he resides. See Section 23-3-450. All that is necessary to trigger an offender’s registration requirement is that he or she “remain in this State” for an aggregate of thirty days during any twelve-month period. There is no requirement that the offender maintain or establish a street or mailing address or a traditional residence during the thirty days that he or she remains here before he or she is required to register. It seems clear that by defining resident the way they did the General Assembly intended the Act to apply to individuals who may never establish or maintain a traditional residence or fixed address. Therefore, an offender is not relieved from his or her registration requirement simply because he or she has no address or fixed residence.

Question 2

As you state, the Act does not specifically define the terms “address” or “residence.” However, as mentioned above, the Act does define resident as a person who remains in the State for a period of thirty days. The meaning assigned to the term address or the term residence must be consistent with this definition of resident. Further, the purpose of the Act should also be kept in mind in this analysis.

The General Assembly has expressed that the purpose of the Act is, among other things, to aid law enforcement in gaining “... information about these convicted offenders who live within the law enforcement agency’s jurisdiction.” The General Assembly has also provided that the State Law Enforcement Division is to operate the Sex Offender Registry. Section 23-3-410 states that “[t]he registry is under the direction of the chief of the State Law Enforcement Division (SLED) and *shall contain information the chief considers necessary to assist law enforcement in the location of persons convicted of certain offenses* (emphasis added).” Obviously, the ability of law enforcement to locate convicted sex offenders was a primary concern of the General Assembly in passing the Act.

Therefore, in the context of the Act, it appears that the term address or the term residence would have to be interpreted as information related to the location of an offender while that offender remains in any particular jurisdiction.

Question 3

It is the duty of the offender to contact the Sheriff of the county in which he resides in order to register under the Act. S.C. Code Ann. §23-3-470. It is also the duty of the offender to provide

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such information to the Sheriff as is prescribed by SLED. S.C. Code Ann. §23-3-450. To the extent that SLED requires the offender provide an address or fixed residence, the offender would be obligated to provide such information. In the event that the offender is homeless or does not maintain such an address or residence, he or she would be obligated to provide sufficient information necessary to assist law enforcement in locating the offender while remaining in the county.

In determining what information would be sufficient to satisfy these requirements, decisions by courts and opinions by Attorneys General regarding address and residency requirements of voter registration laws may be helpful. For example, in Fischer v. Stout, 741 P.2d 217 (Alaska 1987), the Supreme Court of Alaska stated that

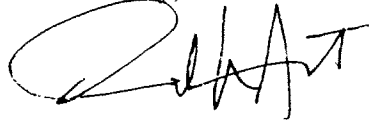
A person's residence is that fixed place of habitation to which the individual intends to return if absent. It need not be a house or apartment. It need not have mail service. A residence need only be some specific locale within the district at which habitation can be specifically fixed. Thus, a hotel, shelter for the homeless, or even a park bench will be sufficient.

741 P.2d at 221. See also Pitts v. Black, 608 F.Supp. 696 (S.D.N.Y.1984); Collier v. Menzel, 221 Cal.Rptr. 110 (1985). Additionally, in a previous opinion, this Office noted that neither statute nor the Constitution defined "residency" for election or voter registration purposes. See Op. S.C. Atty. Gen., dated October 27, 1992. Citing the above opinions we concluded that a residence could include a homeless shelter, a park bench or "wherever." Id.

CONCLUSION

An offender convicted of an offense set out in Section 23-3-430 is not relieved from his or her registration requirement under the Sex Offender Registry simply because he or she has no address or fixed residence. Given the definition of resident contained in the Act and the express purpose of the Act, the term address or the term residence as used in the Act would have to be interpreted as information related to the location of an offender while that offender remains in any particular jurisdiction. Finally, to the extent that SLED requires the offender provide an address or fixed residence, the offender would be obligated to provide such information. In the event that the offender is homeless or does not maintain such address or residence, he or she would be obligated to provide sufficient information necessary to assist law enforcement in locating the offender while remaining in the county.

Sincerely,



David K. Avant
Assistant Attorney General

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