



ALAN WILSON
ATTORNEY GENERAL

June 5, 2013

The Honorable Danny Singleton
Municipal Judge
City of Seneca
225 East North First Street
Seneca, South Carolina 29679

Dear Judge Singleton,

You seek an opinion of this Office concerning placing individuals on trespass notice with regards to apartment complexes and government housing. By way of background, you state:

Currently, our local police department may issue a trespass after notice to an individual who has been warned not to enter the property of another. In respect to apartment complexes and government housing, a tenant may request an individual to be placed on a trespass notice for their apartment only. We have had apartment managers of private apartment complexes and government housing to also place individuals on trespass notice for the entire complex. Most managers place individuals on trespass notice because of being a former tenant where they were evicted for various things including criminal activity. Also, many are placed on trespass notice because they are determined to be living in an apartment with others, and the individual is not listed on the lease.

With this information in mind, you ask the following specific questions:

- 1) Does an apartment manager/owner have the legal authority to place an individual on trespass notice for an entire complex?
- 2) If the apartment manager does not have the authority to place an individual on trespass notice for the entire complex, does the manager have the authority to place a trespass notice on an individual for common areas such as wash rooms, playgrounds, etc.?
- 3) If a tenant invites an individual to their apartment, can the apartment manager have the individual placed on a trespass notice?
- 4) Does law enforcement have the authority to arrest someone for trespassing if it is determined that an apartment manager has had them placed on a trespass notice?

Law/Analysis

The statute specifically addressing the offense of trespass after notice, S.C. Code § 16-11-620, states:

Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

All municipal courts of this State as well as those of magistrates may try and determine criminal cases involving violations of this section occurring within the respective limits of such municipalities and magisterial districts. All peace officers of the State and its subdivisions shall enforce the provisions hereof within their respective jurisdictions.

The provisions of this section shall be construed as being in addition to, and not as superseding, any other statutes of the State relating to trespass or entry on lands of another.

§ 16-11-620.

Furthermore, pursuant to § 16-11-525 the commissioners of a housing authority are considered the owners or possessors of the property of a housing project for purposes of certain offenses against property:

For the sole purpose of determining whether or not any public housing authority property has been maliciously injured as the offense of malicious mischief is defined in Section 16-11-520, and as to whether or not there has been a trespass upon the property as this offense is defined under Section 16-11-600, in all prosecutions under these penal statutes *and other statutes of a like nature*, the members of the board of commissioners of each state, county, or municipal housing authority in this State, in their official capacity, are deemed to be the owners and possessors of all property of each particular housing authority under their jurisdiction. Nothing in this section may be construed to create personal liability for a commissioner for loss, injury, or damage to the person or property of any other person or entity who suffers injury while on or adjacent to housing authority property as a tenant, an invitee, or a trespasser.

§ 16-11-525 (emphasis added). The language of the statute indicating it applies to trespassing under § 16-11-600 “and other statutes of a like nature” includes trespassing after notice under § 16-11-620. See In

Interest of Joseph B., 278 S.C. 502, 299 S.E.2d 331 (1983) (holding § 16-11-620 applies to trespass on public school property where § 16-11-530 provides that trustees of school districts are deemed owners and possessors of all school property for purposes of trespassing under § 16-11-600 “*and other statutes of a like nature*”) (emphasis added).

The language of § 16-11-620 indicates the authority to put a person on trespass notice belongs to the owner of a dwelling house, place of business, or premise, or “the person in possession or his agent or representative.” As our Supreme Court stated with regards to a prior version of § 16-11-620, “[t]he act ... is clearly for the purpose of protecting the rights of the owners or those in control of private property.” City of Greenville v. Peterson, 239 S.C. 298, 303, 122 S.E.2d 826, 828 (1961) *rev'd sub nom.*, Peterson v. City of Greenville, S. C., 373 U.S. 244, 83 S. Ct. 1119 (1963). The language of the statute does not require the owner or possessor of the premises to personally put a person on trespass notice; they may do so through an “agent or representative.”

Clearly, any determination as to the person or persons having the authority to order someone not to enter or to immediately leave property and the scope of such authority is dependent upon the facts and circumstances of any particular case.¹ Thus, such determinations are beyond the scope of an opinion of this Office. See Op. S.C. Att’y Gen., 2010 WL 3896162 (Sept. 29, 2010) (“This Office is not a fact-finding entity; investigations and determinations of fact are beyond the scope of an opinion of this Office and are better resolved by a court”).

In any event, our courts have upheld convictions under § 16-11-620 where the person giving a trespass notice was the owner holding legal title to the property or the tenant in possession,² one who “peaceably possesses the property” as against the titled owner,³ as well as the manager or employee of a business exercising control or custody over the commercial property.⁴ Thus, with regards to an apartment complex or housing project, we believe the plain language of § 16-11-620 generally gives the authority to place someone on trespass notice to the owner, landlord, or manager of the property. See State v.

¹ See, e.g., Grogan v. U.S., 435 A.2d 1069, 1071 (D.C. 1981) (upholding defendants’ convictions for trespassing after notice on property of abortion clinic where defendants were asked to leave by receptionist, clinic’s acting director, building manager, and two police officers, “any one of whom, it could be argued, had clear or apparent authority as ‘the lawful occupant’ or the ‘person lawfully in charge thereof’ to order departure”); 75 Am. Jur. 2d Trespass § 150 (“More than one person can have the authority to order someone to leave either public or private premises; reasonableness is a factor in determining such authority”).

² See State v. Green, 35 S.C. 266, 14 S.E. 619 (1892) (stating prior version of § 16-11-620 was “meant to furnish the owner or tenant in possession of land the legal means to prevent any intrusion thereon by another after notice prohibiting any entry on the same”) (emphasis added).

³ See State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct. App. 1999) (holding defendant guilty of trespass after notice where he refused to leave father’s residence even though defendant claimed he was title owner of home because “a record owner’s right to be on the property may be circumscribed if another person peaceably possesses the property”).

⁴ See Jackson v. City of Abbeville, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005) (attendant at convenience store ordered patron to leave premises); Bryant v. City of Cayce, 332 F. App’x 129 (4th Cir. 2009) (hotel manager ordered guest to leave premises); Wright v. United Parcel Serv., Inc., 315 S.C. 521, 445 S.E.2d 657 (Ct. App. 1994) (holding UPS manager had authority under state law to order employee to leave premises).

LoSacco, 529 A.2d 1348 (Conn. App. Ct. 1987) (noting building superintendent of apartment complex was a “person authorized” to order persons to leave under trespass after notice statute); 75 Am. Jur. 2d Trespass § 165 (“For purposes of criminal trespass law, public housing projects should be afforded the same protection as private apartment buildings”). In addition, this power to put a person on trespass notice extends to any “agent or representative” with the apparent authority to do so, e.g., a security guard, or the express authority to do so, e.g., a law enforcement officer. See State v. Gordon, 437 A.2d 855 (Me. 1981) (holding night manager of business could delegate authority to convey order to leave under trespass after notice statute to police officer).

However, there are limitations on the scope of one’s authority to put someone on trespass notice. First, the express language of § 16-11-620 creates an exception where a person has “legal cause or good excuse” to enter the premises. See also 75 Am. Jur. 2d Trespass § 155 (“In an appropriate factual situation, the common-law defense of necessity may be interposed to a criminal trespass action”). Citing this language, our Supreme Court has held § 16-11-620 does not apply to law enforcement officers who fail to leave upon request by the owner where the officers “were responding to a complaint and therefore had legal cause to be on the property.” Town of Springdale v. Butler, 299 S.C. 276, 279, 384 S.E.2d 697, 698 (1989).

Particularly instructive here, the courts of one state have held that a person placed on trespass notice with regards to an apartment complex or housing project is not guilty under a statute similar to § 16-11-620 if the person enters the property at the invitation of a tenant and the person’s presence in the common areas of the property is limited to the that which is necessary for the purpose of entering and leaving the tenant’s residence. See Com. v. Richardson, 48 N.E.2d 678 (Mass. 1943) (defendants not guilty of trespass after notice as to private apartment complex where they were invitees of tenants); Com. v. Nelson, 909 N.E.2d 42 (Mass. App. Ct. 2009) (defendant not guilty of trespass after notice as to property of Boston Housing Authority where he was invitee of tenant). In Richardson, the holding of the Supreme Judicial Court of Massachusetts was based on notions as to the property rights of the tenants:

It is settled that, when a landlord lets property to be occupied by several tenants, although he retains for certain purposes control of the common doorways, passageways, stairways and the like, he grants to his tenants a right of way in the nature of an easement, appurtenant to the premises let, through those places that afford access thereto.... It is also settled that this easement extends to members of the tenant’s family and to all his guests and invitees.

Richardson, 48 N.E.2d at 682 (citations omitted). Furthermore, the court found this easement possessed by each tenant amounted to a license to pass through the common areas of the complex for the purpose of accessing their respective apartments, and the landlord “could not revoke the license any more than he could an invitation extended by the tenant to one calling upon any legitimate business.” Id. at 683.

In Nelson, Appeals Court of Massachusetts extended the holding and reasoning of Richardson to apply to tenants of a public housing development, stating:

We see no reason why Richardson should not apply to properties owned by the BHA [Boston Housing Authority]. Although Richardson involved a private landlord, its reasoning did not depend on the identity of the landlord, but on the

nature of a residential tenancy. Thus ... residential tenants have a right to admit a visitor to the common areas of a building for purposes of approaching their apartment because such use of the common areas is within the customary “usages of the community.”

....

We conclude, therefore, that ... Richardson applies to guests of tenants in public housing properties. As a result, a conviction for trespass cannot stand against a defendant who is found to be passing through the halls of BHA property in order to reach a tenant’s apartment at the tenant’s invitation. The guest must be passing through, not lingering or loitering....

.... The rule of Richardson provides a defense to a charge of criminal trespass only for those defendants who are in the common areas of an apartment building at the invitation of a tenant and within the scope of that invitation. It does not divest the landlord of “lawful control” of the common areas.

Nelson, 909 N.E.2d at 45-6 (citations omitted).

We believe the above reasoning in Richardson and Nelson to be sound. Thus, we believe a court in this state faced with similar questions would reach similar conclusions as to a person who, although put on trespass notice as to an apartment complex or housing project, is the invitee of a tenant. This would not, however, prevent the enforcement of § 16-11-620 as to a person who loiters or lingers in the common areas of the apartment complex or housing authority, or enters common areas not necessary to gain access to the residence of the tenant who invited them. Therefore, it is our opinion that a person put on trespass notice as to an apartment complex or housing project may be prosecuted under § 16-11-620 for entering such unnecessary common areas such as a playground or a wash room.

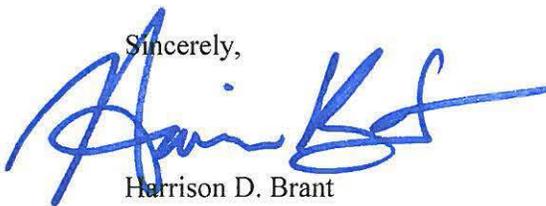
Conclusion

It is the opinion of this Office that the owner, landlord, manager, or superintendent of an apartment complex or a public housing project generally has the authority under § 16-11-620 to place a person on trespass notice with regards to the property of such developments. This authority is not without limits, however. By its express language, § 16-11-620 does not apply to a person who enters or refuses to leave such property after notice “with legal cause or good excuse.” Whether a person has legal cause or good excuse to enter or remain on property after being put on trespass notice is a factual question which is beyond the scope of an opinion of this Office. That being said, we believe a court in this state faced with the questions presented would follow the reasoning and conclusions of the courts of another state that have specifically addressed whether a person placed on trespass notice with regards to an apartment complex or housing project may enter upon such property at the invitation of a tenant. Consistent with those decisions, we believe a court would hold that § 16-11-620 may not be applied so as to infringe upon a tenant’s right of access to his or her residence, including the right to admit an invited guest. Thus, a person generally may not be convicted of trespassing after notice with regards to an apartment complex or a housing project where the person entered such property at the invitation of a tenant.

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However, a legitimate invitation from a tenant provides a guest with a defense to the offense of trespass after notice only to the extent his or her presence in the common areas of the apartment complex or housing project is necessary to gain access to the residence on the inviting tenant. Thus, although a person put on trespass notice as to an apartment complex or housing project may lawfully enter the property at the invitation of a tenant, such person may still be charged with and convicted of violating § 16-11-620 if he or she loiters, lingers, or enters common areas of the property which are not necessary for the purpose of gaining access to the residence of the inviting tenant. This would preclude such a person's presence from a playground or a wash room, the areas you provide by way of example. The enforcement of any such trespass notices by law enforcement should be in accordance with the parameters set forth herein.

Sincerely,



Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General