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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

April 23, 1997

The Honorable B. Lee Miller
Judge, Municipal Court
City of Greenwood
P. O. Box 40
Greenwood, South Carolina 29648

Re: Informal Opinion

Dear Judge Miller:

You have raised a question regarding trespassing on private property after a warning is issued by the owner of said property. Specifically, you state that

> [a] private apartment complex is owned by ABC, which encompasses private roads and common areas that are under the direct maintenance and control of ABC. These areas are also enjoyed by tenants who lease apartments in this complex. (Q-1) Does ABC have the authority to place an invitee of a tenant leasing an apartment in the complex on Trespass Notice. (Q-2) Can criminal charges be brought forward on the invitee for Trespassing After Notice if he/she fails to comply with the notice given by ABC. (Q-3) Would this scenario also apply to a Public Housing complex owned by a Government Agency.

Law / Analysis

S.C. Code Ann. Section 16-11-620 is the general trespass statute and provides in pertinent part that

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> [a]ny 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 within six months preceding 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 within six months not to do so, 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 of his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.
>
> ... 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.

There are other South Carolina trespass statutes extant as well. Section 16-11-610 provides that a person who trespasses upon the lands of another for the purposes enumerated therein is guilty of a misdemeanor. However, with respect to that statute, "[u]nless a person enters the land of another for the purposes enumerated within the statute, there is no trespass under Section 16-11-610." Op. Atty. Gen., June 29, 1979. This Office has previously recognized that "it would have to be established that a person entered upon the lands to do one or more of the following: hunting, fishing, trapping, netting, gathering fruit, wild flowers; cultivate flowers, shrubbery, straw, turf, vegetables or herbs; or cutting timber of such land. This is the limit of the scope of the statute. ... Consequently, Section 16-11-610, may not be utilized to cover any other method or purpose of trespass." Id.

In addition, Section 16-11-640 states:

> [i]t is unlawful for anyone not an occupant, owner or invitee to enter any private property enclosed by walls or fences with closed gates between the hours of six p.m. and six a.m. The provision does not apply to justifiable emergencies, or to premises which are not posted with clearly visible signs prohibiting trespass upon the enclosed premises. Punishment for violation of this section is a fine of not less than twenty-five dollars nor more than two hundred dollars or imprisonment for not more than thirty days.

Various other statutory provisions which pertain to trespass upon public and private property ... also exist as well. Such statutes are classified according to subject matter. (i.e. trespass to park property; trespass of state correctional property; trespass to schools). See, Op. Atty. Gen., June 29, 1979.

Several decisions from other jurisdictions have held in particular circumstances that the knowing entry without authority upon apartment complex property after receipt of a prior warning constituted criminal trespass. For example, in W.L.N. v. State of Georgia, 170 Ga.App. 689, 318 S.E.2d 80 (1984), the defendant entered upon the property of the Peachtree Place North Apartments after receiving notice to depart from such property by properly authorized representatives of the owner. The Court in that case concluded that "appellant's entry upon the premises after prior warning by duly authorized personnel, is sufficient to constitute an act of criminal trespass." Noting that "'[c]riminal trespass is ... a location crime and its purpose is to keep the defendant off the property of others,'" the Court rejected the defendant's argument that "as the invitee of a tenant of the complex the landlord's representatives had no authority to forbid his entry upon or to order his departure from the premises." The Court noted that

> [i]n support of this argument, appellant relies upon Anthony v. Chicopee Mfg. Corp., 168 Ga. 400, 147 S.E. 887 (1929), and Mitchell v. State, 12 Ga.App. 557 (2), 77 S.E. 889 (1913). These cases are cited for the proposition that the landlord is without authority to restrict either the tenant or his invitee in his way of ingress or egress to the residence of the tenant so long as such travel is for lawful business and the rights of the landlord are not infringed upon. The cited cases are, however, not applicable to the factual posture of the present case. Although appellant presented testimony to show that on May 18, 1983 his entry upon the complex premises was for the purpose of purchasing candy from a tenant for resale at school, the State produced evidence to show that, at the very least, appellant exceeded the scope of permissible entry by deviating from the way of ingress and egress to enter upon the landscaped areas to play ball. See Horsley v. State, 16 Ga.App. 136 (2), 84 S.E. 600 (1915). Further, when told to depart, appellant left the landscaped area riding to a parking lot in another area of the complex and circling there, refusing to leave. Moreover, the state also showed that on numerous occasions after appellant's family had moved from the complex and after appellant had been warned not to enter,

> appellant was observed by complex officials and personnel riding, sometimes aimlessly, through the complex premises unaccompanied by residents of the complex. There is, thus, no merit to appellant's assertion of error on this ground.

318 S.E.2d at 81.

Similarly, in Williams v. Nagel, 162 Ill.2d 542, 643 N.E.2d 816 (1994), the Supreme Court of Illinois concluded that

> [a]s a condition to moving into the apartment complex, tenants agreed to abide by the terms set forth in their lease as well as the rules and regulations promulgated by the management. One of the terms to which tenant agreed was that Parkside Apartments, as lessor, reserved the right to bar persons from its property. Any tenant's attempt to invite an individual onto the property who had already been barred by management would result in breach of the lease. Here, the plaintiffs had been barred from the premises by management. As a result, any attempt by tenants to invite the plaintiffs onto the premises would invalid. Therefore, ... a valid invitation was never extended to the plaintiffs ... .

643 N.E.2d at 821.

A recent opinion of the Virginia Attorney General is also instructive. The question in Op. Va. Atty. Gen., June 28, 1996 was whether "a person who goes upon the grounds of a housing complex after having received notice from the manager of the complex that he is forbidden to do so may be charged with criminal trespass ... if he claims that a tenant of one of the housing units invited him onto the premises." Despite the Virginia decisions, Reed v. Commonwealth, 6 Va.App. 65, 71, 366 S.E.2d 274, 278 (1988) and Jones v. Commonwealth, 18 Va.App. 229, 443 S.E.2d 189 (1994), which had held that a good faith belief of a right to be on the premises negates the criminal intent necessary under the criminal trespass statute, the Virginia Attorney General wrote:

> [i]n my view, neither Reed nor Jones stands for the proposition that criminal intent can never be proven when a person goes upon the premises of a multiunit facility after having been notified that he is forbidden to do so, simply because the person has claimed or may claim that he is an

> invitee or a guest of one of the tenants of the facility. Whether the trespasser is an invitee, and whether, despite the receipt of notice forbidding his entry onto the property, he nevertheless had the "good faith belief" that he had the right to be on the premises are factual issues to be determined from the evidence presented at trial. Accordingly, it is my opinion that a person who goes upon the grounds of a multiunit housing facility after having been notified that he is forbidden to do so may be charged with criminal trespass ... .

Our own courts have recognized with respect to § 16-11-620 that "[a]lthough the entry by a person on the premises of another may initially be lawful, the person becomes a trespasser when the person fails to depart after being asked by the owner to leave." Wright v. U.P.S., 315 S.C. 521, 445 S.E.2d 657 (1994) (emphasis added). In Shramek v. Walker, 152 S.C. 88, 99-100, 149 S.E. 331 (1929), our Supreme Court elaborated upon this principle by quoting other well-recognized legal treatises as follows:

> "It is a well-settled principle that the occupant of any house, store or other building, has the legal right to control it, and to admit whom he pleases to enter and remain there, and that he also has the right to expel from the room or building any one who abuses the privilege which has been thus given him. Therefore, while the entry by one person on the premises of another may be lawful, by reason of express or implied invitation to enter, his failure to depart, on the request of the owner, will make him a trespasser and justify the owner in using reasonable force to eject him. The most common cases involving the right of an owner to eject one from his premises who entered lawfully, are those where a person enters a hotel or business place or the conveyance of a common carrier and while therein forfeits his right to remain by his misconduct or failure to comply with the reasonable rules and regulations. On the forfeiture of his right he becomes a common trespasser and may be forcibly ejected on failure to depart after a request to do so ... ."
>
> An exceedingly clear statement of the rule is found in Watrous v. Steele, 4 Vt. 629, 24 Am.Dec. 648: "It is a well-settled principle that the occupant of any house, store or other building, has a legal right to control it, and to admit whom he

> pleases to enter and remain there, and that he has also a right to expel any one from the room or building who abuses the privilege which has thus been given him; and if the occupant finds it necessary, in the exercise of his lawful rights, to lay hands on him to expel him he can legally justify the assault.

And in State v. Green, 235 S.C. 266, 268 (1892), our Supreme Court stated that "when the owner or tenant in possession of land forbids entry thereon, any person with notice who afterwards enters such premises is liable to punishment."

In an opinion of this Office dated October 8, 1986, we concluded that § 16-11-620 "is applicable to the parking area of a shopping mall. Therefore, such statute may be used in the situation referenced by you [to prevent individuals from loitering or congregating in the mall] assuming all procedural requirements of the statute are met."

Admittedly, there is authority which recognizes the tenant's right to invite persons onto the premises. It is stated at 49 Am.Jur.2d, Landlord and Tenant, § 504 that

> [i]n the absence of an restriction in the agreement between the landlord and tenant, the tenant, when in possession of the demised premises, has the right to invite or permit such persons as the tenant's business interests or pleasure may suggest to come upon the premises, for any lawful purpose, and the landlord has no right to prohibit such persons from coming on the demised premises. This rule presupposes, however, that the invitee enters at a reasonable hour, conducts himself in an orderly manner, and enters on some business in which the tenant has an interest. One who thus comes upon the premises upon the invitation of the tenant, although expressly forbidden to do so by the landlord, is not guilty of a criminal trespass. Moreover, the tenant may invite or permit his servants to come upon the premises.
>
> On the other hand, the tenant's right to invite or permit persons on the premises may be affected by the fact that the commission of a nuisance upon the demised premises is involved.

See also, L.D.L. v. State, 569 So.2d 1310 (Fla. 1990).

In City of Kent v. Herman, 1996 W.L. 210780 (Ohio 1996), the Court in holding that a person invited onto the premises of an apartment complex by a tenant has a right to be there, also stressed the following:

> [w]e also recognize that lease agreements in such complexes may include provisions that reasonably restrict guest privileges to such common facilities as pools, tennis courts, and other recreational facilities, and that notification to an individual of his or her unpermitted access to these areas may form the basis for criminal culpability. However, unless these constraints are included in the leases, guest utilization of these common area facilities, in and of itself, cannot provide the underpinnings for the imposition of criminal liability upon an invited guest of one of the residents into such an area.

Another more recent Georgia decision, Arbee v. Collins, 219 Ga.App. 63, 463 S.E.2d 922 (1995) provides an excellent summary of the law in this area and reconciles the various conflicting cases. There, the Court stated:

> [a]n accused violates the criminal trespass provisions of OCGA § 16-7-21(b)(2) by entering or remaining upon the premises of another with knowledge that he has been given notice that his presence is forbidden. However, a recognized defense to such a charge is that the accused entered or remained upon the property under a right granted by a tenant in possession of the property. "In the absence of a special contract, the landlord has no right to forbid a person to go upon the premises in the possession of a tenant, by the latter's permission and for a lawful purpose." Mitchell v. State, 12 Ga.App. 557, 559-60, 77 S.E. 889 (1913); Horsely v. State, 16 Ga.App. 136, 141-143, 84 S.E. 600 (1915). The tenant's invitation to a third party carries with it the same rights enjoyed by the tenant to ingress and egress are necessary to the purpose of the invitation. Anthony v. Chicopee Mfg. Corp., etc., 168 Ga. 400, 404, 147 S.E. 887 (1929); W.L.N. v. State of Ga., 170 Ga.App. 689, 691, 318 S.E.2d 80 (1984). It follows that the invitation also carries with it the same rights enjoyed by the tenant to common areas in a multi dwelling apartment complex to the extent the use of such common areas is connected to the purpose of the invitation.

See Restatement of the Law, Torts 2d, § 189 ... . A landlord who arrests and prosecutes a person for trespass without inquiring as to whether the person had a right to be on the premises pursuant to invitation by a tenant does so at his own risk. Ellis v. Knowles, 90 Ga.App. 40, 42, 81 S.E.2d 884 (1954) ... .

Here, the facts relating to the existence of probable cause on the criminal trespass charge are undisputed, so the question is one of law. Arbee knew prior to the day of his entry upon the Marsh Cove property that he had been notified not to enter the premises. He produced evidence that he was invited by Lineback to visit Lineback at his father's apartment, he and Lineback were leaving the property when they saw Collins near the entrance to the apartments. After Collins reminded Arbee that he had been notified not to enter the premises, and Collins left without taking any action, Arbee then proceeded away from the exit and remained on Marsh Cove property for the purpose of going to the manager's office "to see what was going on." The arrest occurred after he arrived at the manager's office.

It is unclear from the record where the manager's office was located on the Marsh Cove property and whether the road adjacent to it or the area around it where Arbee was arrested was a common area of the apartment complex accessible to all tenants. Even assuming that Arbee was arrested in a common area of the apartment complex, there was evidence demonstrating the existence of probable cause. We agree with the trial court's conclusion that when Arbee proceeded to the manager's office "to see what was going on" this was evidence he deviated from the purpose for which he was invited on the property and entered upon a portion of the premises unrelated to the invitation. A tenant's guest may not proceed at will to a part of the premises wholly disconnected to the purpose of the invitation and use the invitation as a defense to a charge of criminal trespass. Evidence that Lineback merely accompanied Arbee to the manager's office is insufficient to show that Arbee took this action pursuant to the invitation from Lineback.

463 S.E.2d at 924-925.

I have not found a South Carolina case which squarely addresses your question. And of course, it is primarily a factual question as to whether the requirements of § 16-11-620 have been complied with, and, likewise, it is a factual issue whether, in a particular circumstance, a trespasser is "without legal cause or good excuse." However, it is my opinion, based upon the foregoing authorities, that the criminal trespass statute would be applicable to your situation, depending upon the particular facts involved. For example, if the lease specifies the landlord's right to forbid an invitee not to return to the property, particularly the commons areas, the law generally supports his right not to do so. Secondly, the invitee may not deviate from the specified purpose of his invitation and thus may not loiter or congregate on the property particularly in common areas. Third, the invitee cannot create a nuisance or hazard on the property nor may not violate the law based upon the invitation of the tenant. In other words, while the law would generally protect an invitee of a tenant, the landlord may alter such protection through the lease. Any such invitation does not extend to the creation of a nuisance, violation of law, or disturbance. Moreover, the tenant's invitation cannot extend to access by the invitee beyond the designated purpose of the tenant's invitation. Of course, the provisions of the trespass statute would need to be followed by the landlord -- including the notice requirement -- for the statute to be applicable; however, in my judgment, a criminal trespass is not negated merely because the tenant had invited a person onto the property where the landlord had warned the person not to return to the premises.

With respect to your question regarding whether the statute would apply to a public housing unit as well as a private apartment complex, it is my opinion that it would. In Op. Atty. Gen., Op. No. 88-13 (February 5, 1988), this Office described the case law in South Carolina regarding trespass on public property as follows:

> ... in State v. Hanapole, 255 S.C. 258, 178 S.E.2d 247 (1970) and In the Interest of Joseph B., 278 S.C. 502, 299 S.E.2d 331 (1983) which dealt with the construction of this State's trespass statute, Section 16-11-620 of the Code. Such statute prohibits trespass 'into the dwelling house, place of business or on the premises of another person.' In Hanapole, the Court held that Section 16-11-620 applies only to a trespass on private property. As a result, such provision was inapplicable to conduct at the Columbia Metropolitan Airport, which, as described by the Court, was owned by the Richland-Lexington Airport District, a political subdivision of this State, and which was, therefore, public property.

> In the case of In the Interest of Joseph B., the Court ruled that Section 16-11-620 does, however, prohibit trespassing on public school property. While acknowledging its ruling in Hanapole, the Court referenced Section 16-11-530 of the Code which states:
>
> > (f)or the purpose of determining ... whether or not there has been a trespass upon ... (school) ... property as this offense is defined in Section 16-11-600 and for all prosecutions under ... other statutes of a like nature, the trustees of the respective school districts in this State in their official capacity shall be deemed to be the owners and possessors of all school property.
>
> Noting that Section 16-11-530 was applicable to prosecutions for trespass under Section 16-11-620, the Court determined that for purposes of a trespass prosecution under the latter provision, public school property is 'owned and possessed' by the particular school district trustees pursuant to Section 16-11-530. As described by the Court, "... a trespass upon school lands is a trespass 'on the premises of another' as provided in Section 16-11-620."

Similar to the situation in Joseph B., § 16-11-525 deems the commissioners the owners of Housing Authority property for certain purposes. Such Section provides as follows:

> [f]or 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 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.

Thus, in light of the similarities of the Housing Authority statute to the school district law, the Joseph B. case would be controlling, and the criminal trespass statutes would be applicable to a public housing authority.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/an