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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 22, 1996

The Honorable Gene Taylor
Sheriff, Anderson County
P. O. Box 5497
Anderson, South Carolina 29623

Re: Informal Opinion

Dear Sheriff Taylor:

You provide the following information and make the following inquiry:

> ... we wish to go on the Internet and post some public records including bad check warrants, pending evictions, and past evictions. Our goal is to benefit businesses and individuals who depend on checks and renters. I would appreciate your office looking into the legalities of this matter and furnishing us with your opinion.

In Snakenberg v. Hartford Casualty Ins. Co., Inc., 299 S.C. 164, 383 S.E.2d 2 (Ct. App. 1989), Judge Bell, speaking for a unanimous Court of Appeals examined in a scholarly opinion the law in South Carolina relating to an invasion of a person's privacy by another. He summarized the history of the law of privacy as follows:

> [t]he right to privacy is one kind of dignitary interest.
>
> The law recognizes that each person has an interest in keeping certain facets of personal life from exposure to others.
>
> ... However, in the classical common law, this privacy interest did not give rise to a separate cause of action for damages. In

> part, this was because many interests we now regard as rights of "privacy" were already protected by the common law in other ways. [In addition to trespass] ... [o]ther types of intrusive conduct gave rise to additional actions for nuisance, defamation, and the like ... .
>
> At the beginning of this century, however, American courts began to recognize a separate tort liability for interference with another's privacy, and the right to privacy was born. Following the seminal case of Pavesich v. New England Life Insurance Company, 122 Ga. 190, 50 S.E. 68 (1905), the South Carolina Supreme Court first recognized a right of privacy in Holloman v. Life Insurance Company of Virginia, 192 S.C. 454, 7 S.E.2d 169, 127 A.L.R. 110 (1940). Although the Court has decided several "right to privacy" cases since Holloman, the common law of privacy remains largely undeveloped in South Carolina.

Judge Bell furthers stated that South Carolina recognized three separate and distinct causes of action for invasion of privacy. These are: (1) wrongful appropriation of personality; (2) wrongful publicizing of private affairs; and (3) wrongful intrusion into private affairs. See, Rycroft v. Gaddy, 281 S.C. 119, 314 S.E.2d 39 (Ct. App. 1984).

The Court in Snakenberg stated that the wrongful publicizing of private affairs "involves a public disclosure of private facts about the plaintiff. The gravamen of the tort is publicity as opposed to mere publication. The defendant must intentionally disclose facts in which there is no legitimate public interest ... ." 299 S.C. at 170-171. However Judge Bell clearly recognized with respect to this cause of action that " ... there is no right of privacy in public matters." Clearly, therefore, before any invasion of privacy may occur, the publication complained of must consist of material or information which remains in the private domain. "A cause of action for public disclosure lies only for disclosure of private facts which are of no legitimate public concern." Parker v. Evening Post Pub. Co., 452 S.E.2d 640, 646 (Ct. App. 1995)

Generally speaking, public records are outside that category. It is well-recognized that

> [n]o right of privacy is invaded when state officials allow or facilitate publication of an official act such as an arrest. A person's alleged criminal involvement may be a matter of

> public record. When it is, the publication of such "newsworthy" information may not be circumscribed, at least where the newspaper or other article carefully notes the "alleged" nature of the report.

62A Am.Jur.2d, Privacy, § 117. It is also long established as a general rule that

> [r]eports of the investigations of crimes or matters pertaining to criminal activity have almost without exceptions been held to be newsworthy or matters of legitimate public interest as a matter of law.
>
> ... What must be considered in cases involving past crimes is whether the matter continues to arouse the interest of the public. The passage of time alone does not extinguish the privilege of a publisher to report newsworthy matters. Therefore, a matter that received extensive publicity and notoriety may continue to be of legitimate public interest for many years.

Id. at § 189.

In Frith v. Associated Press, 176 F.Supp. 671 (E.D.S.C. 1959), the Associated Press put on the wire the official photographs distributed by SLED of six men arrested for the beating of a Camden High School Band Director. Other newspapers picked up the wire photo and published a factual account of the arrest. Plaintiffs, who were the subject of the photographs and stories sued for invasion of privacy.

Judge Wyche granted summary judgment on behalf of the defendant, Associated Press. He recognized that "[t]he right of privacy is not absolute ... and in almost every case, the court must resolve a conflict between the rights of the individual on one hand and the interests of society and a free press on the other." 176 F.Supp. at 674. The Court further stated that "[t]he two primary limitations placed on the right of privacy are publications of public records and publications of matters of legitimate or public interest." In the matter before it, concluded the Court,

> [t]he pictures complained of by plaintiffs were identification portraits taken by the South Carolina Law Enforcement Division as a routine part of its duties in the investigation of the Guy Hutchin's flogging and the arrest of the plaintiffs in

> conjunction therewith on charges aforestated. South Carolina Law Enforcement Division is the statutory investigative arm of the State of South Carolina ... .

The Court further reasoned that this was a matter of legitimate public or general interest.

> The plaintiffs in these cases had become associated with an event of great public interest and for that reason it is difficult to see how their privacy was invaded. In the case Coverstone v. Davies, 1952, 38 Cal.2d 315, 239 P.2d 876, at page 880, the California Supreme Court said: "The facts concerning the arrest and prosecution of those charged with violation of the law are matters of general public interest. Therefore the publication of details of such official actions cannot, in the absence of defamatory statements be actionable." ....
>
> The beating of Guy Hutchins by a group of hooded men aroused great public interest. The public of South Carolina desired to know what was being done about it. Consequently, a press conference was called in the Governor's office to report the arrests of the plaintiffs to the news media, knowing that the result would be the publication of the pictures and information disseminated by the Governor's legal assistant. The Associated Press and its member newspapers did nothing more than report to the public of South Carolina and other states the facts in the arrest story as it was related to them. The public had a right to know the facts and this right in these cases was paramount to that of the plaintiffs. By the issuance of a warrant and the arrest of the plaintiffs, they became figures of public interest. As such the publication of their pictures was not an unwarranted invasion of privacy.

Id. at 675-676.

In Herring v. Retail Credit Co., 266 S.C. 455, 224 S.E.2d 663 (1976), our Supreme Court addressed the question of invasion of privacy in the dissemination of public records. There, the lower court had ordered a consumer reporting agency to delete from its records any reference to the respondent's guilty plea to gambling conspiracy in Federal District Court as well as the sentence imposed and served. The Fair Credit Reporting Act

implicitly permitted the reporting of records of arrest, indictments and convictions in consumer credit reports.

The South Carolina Supreme Court reversed the order of the lower court. Noting that "[i]t is obvious that one's criminal record is pertinent in a number of consumer credit and insurance transactions and especially important in the employment area ...", the Court referenced Fite v. Retail Credit Co., 386 F.Supp. 1045 (D.C. Mont. 1975). In Fite, an injunction of a similar nature had been sought against a credit reporting agency maintaining records of his arrest and conviction. The conviction was subsequently set aside, but Fite lost his job, nonetheless, as a result of the credit report. Our Supreme Court quoted the following passages from Fite with approval:

> "Court proceedings are public events and the public has a legitimate interest in knowing the facts in them. Traditionally court records have been public records, generally open for public inspection. Fair reports of what is shown on public records may be circulated freely and without liability. In the field of criminal law records of indictments, arrests and arraignments are constantly reported without liability, and this even though any particular case may be later dismissed or judgment of acquittal entered. Piracci v. Hearst Corp., 263 F.Supp. 511 (D. Md. 1966), aff'd 371 F.2d 1016 (4th Cir. 1967). Certainly there is no general public policy which prevents disclosure of the record of arrests, indictments, or convictions. Fite, supra at 1046."

Therefore, the Court held that

> ... inclusion and reporting such information of public record by a consumer credit reporting agency to those with legitimate business needs for a consumer credit report for a period of not more than seven years ... is not an invasion of privacy, as respondent contends, nor is it against public policy.

224 S.E.2d at 665.

Finally, an opinion of this Office, dated July 10, 1991 (No. 91-44) is pertinent to this issue. In that opinion, we addressed the propriety of the South Carolina Department of Social Services publishing a "Ten Most Wanted" non-supporting parents poster. The poster was described as follows:

> [T]he proposed poster would state that South Carolina's ten most wanted non-supporting absent parents were "wanted" by DSS and/or law enforcement authorities due to the amount of past due child support they owe. Persons with information about the subjects on the poster would be directed to call a toll-free telephone number. Each subject would be identified by name, photograph, age, height, weight, number of children and their ages, occupation, amount of child support, ordered to be paid, how many payments have been missed, amount of past due support which has accrued as of a certain date, parent's last known whereabouts, when last payment was made, and perhaps other information (outstanding bench warrants, for example). ... Clearly, most if not all of the information to be publicized would be contained in the files of the Office of Child Support Enforcement of DSS. The information would also be available from the files in the offices of the clerks of court, as in domestic relations files, child support enforcement records, judgment rolls perhaps, and similar records. The photographs on the poster would come primarily from the driver's license files of the South Carolina Department of Highways and Public Transportation.

In the opinion, we concluded that "there would be no expectation of confidentiality with respect to a matter which is already a matter of public record." In reaching that conclusion, we relied in part upon an opinion of the California Attorney General which had validated the District Attorney's publishing in the newspaper a list of those who had outstanding warrants of arrest against them for failure to provide child support. The California Attorney General emphasized that "[t]he fact of the filing of the criminal complaint and the fact of the issuance of a warrant of arrest ... are matters of record in the court." Since no statute made the arrest warrants in California confidential, the Attorney General reasoned that where the purpose was to assist in locating those who refused to pay their child support, the district attorney was free to post the names of those who had warrants against them. Likewise, we concluded that the "most wanted" poster proposed by DSS would not intrude. Similarly, we recently concluded that a sex offender registry which is based on public records does not violate the federal Constitution. Op. Atty. Gen., April 10, 1995.

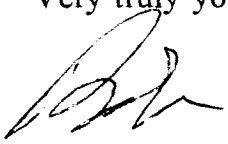
Based upon the foregoing, it is my opinion that the reporting of information, such as warrants, from a public record does not constitute an invasion of privacy or defamation. So long as a public official such as yourself is reporting from public records in an

accurate way, one which is not misleading, the courts recognize that no invasion of privacy occurs. Arrest warrants are generally public information in South Carolina, Op. Atty. Gen., January 24, 1990, as are court records relating to evictions. If you are merely providing current or recent information from documents such as these, such would not be prohibited, consistent with the foregoing authorities.

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

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