

The State of South Carolina



Opinion No. 85-22

75

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-3970

March 13, 1985

The Honorable James L. Solomon, Jr.
Commissioner, South Carolina Department
of Social Services
Post Office Box 1520
Columbia, South Carolina 29202-9988

Dear Commissioner Solomon:

In a letter to this Office you indicated that Section 20-7-490(c)(2) Code of Laws of South Carolina, 1976, defines "harm" to a child's health or welfare as occurring when a parent, guardian or other person responsible for the child's welfare "commits or allows to be committed against the child a sexual offense as defined by the laws of this State." You further stated that State law must be coextensive with the federal definition of "sexual exploitation" as found in 45 C.F.R. 1340.2(e)(2) in order for South Carolina to remain eligible for substantial federal funding under the provisions of the Federal Child Abuse Prevention and Treatment Act (Pub.L. 93-247 as amended by Pub.L. 95-266, enacted April 24, 1978) 42 U.S.C. § 5101 et seq. The definition of sexual exploitation at 45 C.F.R. § 1340.2(d)(2) is as follows:

"Sexual exploitation" includes allowing, permitting, or encouraging a child to engage in prostitution, as defined by State law, by a person responsible for the child's welfare; and allowing, permitting, encouraging or engaging in the obscene or pornographic photographing, filming or depicting of a child as those acts are defined by State law, by a person responsible for the child's welfare."

REQUEST LETTER

Continuation Sheet Number 2

To: The Honorable James L. Solomon, Jr.
March 13, 1985

You indicated that Sections 16-15-90, 16-15-350, 16-15-360, and 16-15-380, Code of Laws of South Carolina, 1976, are the same general offenses as those provided in the definition in the above federal regulation defining "sexual exploitation."

Referencing the above, you have asked whether Sections 16-15-90, 16-15-350, 16-15-360, and 16-15-380 constitute sexual offenses for the purpose of defining harm to a child's health or welfare as used in Section 20-7-490(c)(2). Section 16-15-90 prohibits prostitution and defines the elements of such offense. Section 16-15-350 provides that:

"No person shall knowingly:

(1) Photograph himself or any other person for purposes of preparing an obscene film, photograph, negative, slide or motion picture for the purpose of dissemination in a public place;

(2) Model, pose, act or otherwise assist in the preparation of any obscene film, photograph, negative, slide or motion picture for the purpose of dissemination in a public place. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be punished as provided in § 16-15-430."

Section 16-15-360 prohibits intentionally hiring, employing, using, or permitting any person under eighteen years of age to do or assist in doing an act or thing which is an offense under Section 16-15-350. Section 16-15-380 prohibits photographing a minor for an obscene film, photograph or the like or allowing a minor to assist in the preparation of such obscene material.

The term "sexual offense" is not defined in the Code. However, it appears that based upon common usage and understanding, Section 16-15-90, 16-15-350, 16-15-360, and 16-15-380 should be considered to be sexual offenses. Criminal penalties are provided for the violation of such provisions. Sections 16-15-350, 16-15-360 and 16-15-380 prohibit a minor's involvement in the preparation of obscene photographs, films, or other such materials. Pursuant to Section 16-15-260, Code of Laws of South Carolina, 1976, "obscene or obscenity" means

Continuation Sheet Number 3

To: The Honorable James L. Solomon, Jr.
March 13, 1985

"...any work, material or performance which, taken as a whole, appeals to the prurient interest in sex, which portrays sexual conduct in a patently offensive way, and which, taken as a whole, does not have serious literary, artistic, political, educational or scientific value." (Emphasis added.)

"Prostitution" has a variety of definitions. However, it is generally considered to be defined as indiscriminate sexual intercourse for hire. "Prostitution", Words and Phrases, Vol. 34A, pp. 507-514. Therefore, inasmuch as the referenced provisions in Title 16 prohibit criminal activity of a sexual nature, such would come within the commonly understood definition of sexual offenses. Moreover, in the opinion of this Office, such would constitute sexual offenses for the purpose of defining "harm" to a child's health or welfare when committed or allowed to be committed against a child by a parent, guardian or other person responsible for a child's welfare. As a result, committing or allowing to be committed against a child any of the above-referenced provisions of Title 16 would constitute "harm" for purposes of Section 20-7-490(c).


In your second question you asked whether there are any other State code provisions which would be included in the term "sexual offense." This Office is unable to provide a conclusive list of such type provisions. Obviously, such offenses as criminal sexual conduct as provided for in Sections 16-3-652 et seq., Code of Laws of South Carolina, 1976, would be included. Others would include Section 16-15-130, [indecent exposure], 16-15-140 [lewd act upon a child], and 16-15-20 [incest]. If there are any specific provisions which are of concern to you, this Office would review such upon request.

In your final question you asked whether State laws on sexual exploitation are coextensive with the federal definition of sexual exploitation as stated in 45 C.F.R. § 1340.2(d)(2). Based upon the above analysis of the type offenses which would constitute sexual offenses for the purpose of defining harm to a child's health or welfare, in the opinion of this Office, State law is coextensive with the federal definition of sexual exploitation as provided in 45 C.F.R. § 1340.2(d)(2).

Continuation Sheet Number 4
To: The Honorable James L. Solomon, Jr.
March 13, 1985

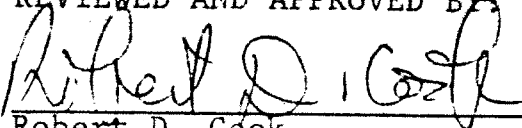
If there is anything further, please advise.

Sincerely,


Charles H. Richardson
Assistant Attorney General

CHR:djg

REVIEWED AND APPROVED BY



Robert D. Cook
Executive Assistant for Opinions