1977 WL 37214 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
January 7, 1977

***1** Mrs. Elaine Childers
P. O. Box 2273
Anderson, S.C. 29622

Dear Mrs. Childers:
Your letter of December 28, 1976, addressed to Attorney General McLeod has been referred to me for handling, and I have read your letter and its enclosure with interest. I can deeply appreciate your concern when obscene or sexually explicit movies or material are made available in such a manner as to allow viewing by children or subjecting unwilling individuals to invasions of their privacy or sensibilities. The attempted regulation of obscene and pornographic materials has been a matter which has confused and congested the courts for a number of years. Because regulation of any expression evokes concern for our First Amendment freedoms of speech and press, the courts have closely scrutinized regulatory schemes with the United States Supreme Court being the final arbiter in such constitutional controversies.

In order to protect citizens from such incidents as you complain of, the General Assembly of South Carolina in 1971 passed Sections 5-121 through 5-123, copies of which are enclosed. As you can see, these sections made it unlawful for X-rated or other movies containing certain nude scenes to be shown at drive-in theaters anywhere in the State under circumstances which allowed their viewing from the public highway. That same year the Legislature enacted Section 5-124 which makes the previewing of X-rated motion pictures unlawful under certain conditions in Anderson County. I have enclosed a copy of that Section as well. Similar legislation was enacted in other states and towns.

In June, 1975, the United States Supreme Court considered a case made under a Jacksonville, Florida ordinance very similar to the South Carolina statute above referred to. In that case of Erznozik v. City of Jacksonville, the United States Supreme Court struck down the ordinance as being unconstitutional and an infringement of First Amendment rights. I have enclosed a copy of that decision so that you might read and understand the Court's reasoning and pronouncements despite the numerous arguments made in favor of such legislation. Although the South Carolina Statute has not been construed in the State or Federal Courts and must be presumed constitutional until declared contrary by our State Supreme Court or the United States Supreme Court, the Erznozik case certainly raises questions as to whether the South Carolina legislation could be upheld. Regretably, such a state of affairs leaves both the individual citizen and law enforcement personnel in a state of frustration and confusion.

This Office has drafted and made available to the General Assembly suggested new legislation to more effectively regulate the problems of obscenity, indecent exposure, and related matters consistent with constitutional rights but no further action has been taken by that body. The Attorney General joins me in sharing your concern and appreciates your public spirited interest.

***2** With warm regards,
Yours very truly,

John P. Wilson
Senior Assistant Attorney General

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