

2006 WL 3199986 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 10, 2006

*1 Major Mark A. Keel
Chief of Staff
South Carolina Law Enforcement Division
P. O. Box 21398
Columbia, South Carolina 29221-1398

Dear Major Keel:

In a letter to this office you referenced sex offenders of other states who relocate to South Carolina. You indicated that some of these offenders are also classified as sexually violent predators. You have questioned whether SLED should automatically classify an out-of-state sexually violent predator as a sexually violent predator when relocating to South Carolina and subject the individual to the more frequent registration requirements. In the alternative, you asked whether SLED should make a determination to classify an individual as a sexually violent predator based upon the available information of the offender's past criminal history, such as the severity and times the individual has been convicted of a sexually violent offense.

For purposes of South Carolina law, pursuant to S.C. Code Ann. § 44-48-30(1), a "sexually violent predator" is defined as a person who

(a) has been convicted of a sexually violent offense; and

(b) suffers from a mental abnormality or personality disorder that makes the person likely to engage in acts of sexual violence if not confined in a secure facility for long-term control, care, and treatment.

As to requirements for registration, pursuant to S.C. Code Ann. § 23-3-460 as amended by Act No. 342 of 2006, [a] person determined by a court to be a sexually violent predator pursuant to state law is required to verify registration and be photographed every ninety days by the sheriff's department in the county in which he resides unless the person is committed to the custody of the State, and verification will be held in abeyance until his release.

This requirement for registration is consistent with other statutory requirements regarding registration of sexually violent predators, particularly S.C. Code Ann. § 44-48-160, which states that "[a] person released from commitment pursuant to this chapter...(the "Sexually Violent Predator Act")... must register pursuant to and comply with the requirements of Article 7, Chapter 3 of Title 23." Those requirements are codified by S.C. Code Ann. §§ 23-3-400 et seq. which, in providing for this State's sex offender registry, mandates the registry of certain offenders for sex related offenses. Pursuant to Section 23-3-460, as to sex offenders generally,

[a] person required to register pursuant to this article is required to register bi-annually for life...The person required to register shall register and must re-register at the sheriff's department in each county where he resides, owns real property, or attends any public or private school, including, but not limited to, a secondary school, adult education school, college or university, and any vocational, technical, or occupational school.

However, as noted above, that same statute further provides that an individual “determined by a court to be a sexually violent predator pursuant to state law” is required to verify registration and be photographed every ninety days at the sheriff’s department of the county where he resides.

***2** As to your specific question of whether SLED should automatically classify an out-of-state sexually violent predator as a sexually violent predator when relocating to this state and subject the individual to the more frequent registration requirements or does SLED make a determination to classify an individual as a sexually violent predator based upon the available information of the offender’s past criminal history, first of all, I am unaware of any basis authorizing SLED to classify an individual as a sexually violent predator. Relevant provisions provide that the determination of an offender is a sexually violent predator is made by a court. See: S.C. Code Ann. §§ 44-48-90 and 44-48-100. As explained in Page v. State, 364 S.C. 632, 637, 615 S.E.2d 740, 742 (2005)

[i]f the prosecutor’s review committee determines probable cause exists to support the allegation, the Attorney General may file a petition with the court in the jurisdiction in which the person committed the offense to request that the court make a probable cause determination as to whether the person is a sexually violent predator. S.C.Code Ann. § 44-48-70. If the probable cause determination is made, the person is transferred to a secure facility for evaluation. S.C.Code Ann. § 44-48-80(D). Within sixty days of the probable cause hearing, a trial is conducted to determine whether the person is a sexually violent predator. The person or Attorney General may request a jury trial. S.C.Code Ann. § 44-48-90. The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. S.C.Code Ann. § 44-48-100. (emphasis added).

Therefore, inasmuch as such statutes reference a determination by a court of an individual as a sexually violent predator, I am unaware of any basis for SLED to make such a classification.

As to your question of whether SLED should automatically classify an out-of-state sexually violent predator as a sexually violent predator when relocating to South Carolina and subject the individual to the more frequent registration requirements, when interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

***3** In the opinion of this office, it was the intent of the General Assembly that any individual “determined by a court to be a sexually violent predator pursuant to state law” register as a sexual predator in this State. It appears that the term “determined by a court” would apply to any court that has made such a determination, including courts outside this State. Support for such a construction is found in the statutory provisions requiring registration of sex offenders generally. Section 22-3-430 (A) requires that

[a]ny person, regardless of age, residing in the State of South Carolina who in this State has been convicted of, adjudicated delinquent for, pled guilty or nolo contendere to any offense described below, or who has been convicted, adjudicated delinquent, pled guilty or nolo contendere, or found not guilty by reason of insanity in any comparable court in the United States...of a similar offense...shall be required to register pursuant to the provisions of this article. (emphasis added).

Therefore, the legislature extended the requirement of registration not only to sex offenders convicted in this state, but also to out of state offenders who reside in South Carolina. As a result, any person who has been convicted in "any comparable court" in this country of a particular offense set forth in Section 23-3-430 is required to register. Section 23-3-460 specifically requires bi-annual registration for life of these offenders. Such provision additionally requires that persons "determined by a court to be a sexually violent predator" verify registration and be photographed every ninety days.

In the opinion of this office the terms "court" as used in Section 23-3-430 and 23-3-460 should be read comparably with the result that its use in Section 23-3-460 would be interpreted to also mean any court in this country. As a result, in the opinion of this office, the better reading of the provision requires that any individual "determined by a court to be a sexually violent predator" verify registration and be photographed every ninety days by the sheriff's department in the county in which he resides, unless, of course, that person is committed to the custody of the State, and verification then would be held in abeyance until his release. Therefore, a sexually violent predator who relocates to South Carolina would be subjected to the more frequent registration requirements. Of course, to avoid any ambiguity, consideration could be given to amending the provision to specifically state that its requirement would include a determination of sexually violent predator status by any court in this country.

If there are any questions, please advise.

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
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