1978 S.C. Op. Atty. Gen. 7 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-34, 1978 WL 22492

Office of the Attorney General

State of South Carolina
Opinion No. 78-34
January 3, 1978

***1** TO: Morris D. Rosen, Esq.
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QUESTIONS:

May the Medical University of South Carolina require those entering and leaving the University Hospital to submit to searches of packages and handbags as a condition of entering and leaving the hospital premises.

STATUTES AND CASES:

Section 59–123–60, Code of Laws of South Carolina, 1976; COLLIER V. MILLER, 414 F. Supp. 1357 (S. D. Tex. 1976); WHEATON V. HAGAN, 46 L. W. 2127 (M.D.N.C. 1977); DOWNING V. KUNZIG, 454 F.2d 1230 (6th cir. 1972); UNITED STATES V. SKIPWITH, 482 F. 2d 1272 (5th Cir. 1972); SCHNECKLOTH V. BUSTAMANTE, 412 U. S. 218; KATZ V. UNITED STATES, 389 U. S. 347.

DISCUSSION

Section 59–123–60, Code of Laws of South Carolina, 1976, empowers the Board of Trustees of the Medical University to make rules and regulations concerning its operations so long as they are 'not inconsistent with the Constitution and the laws of this State or United States . . ..' A regulation establishing a policy of warrantless searches must necessarily meet the strict requirements of the Fourth Amendment of the Constitution of the United States as made applicable upon the states by the Fourteenth Amendment.

Subject to certain well defined exceptions, warrantless searches are unreasonable per se. See SCHNECKLOTH V. BUSTAMONTE, 412 U.S. 218; KATZ V. UNITED STATES, 389 U.S. 347. 'The creation or recognition of an exception to the 'warrant-based-on-probable-cause' requirement is generally premised on a tripartite weighing of public necessity, efficacy of the search and degree of the intrusion.' COLLIER V. MILLER, 414 F. Supp. 1357, 1361 (S.D. Tex. 1976).

Two Federal District Courts have recently confronted the issue of warrantless searches as a condition of entry into public coliseums. In one case the coliseum belonged to a municipality; in the other, the coliseum belonged to a state university. But, in both cases, the courts struck down the regulations allowing search as a condition of entry, such searches being in violation of the Fourth Amendment, COLLIER V. MILLER, 414 F. Supp. 1357 S.D. Tex. 1976); WHEATON V. HAGAN, 46 L.W. 2127 (M.D.N.C. 1977).

In each case, the respective District Courts considered the efficacy of the search and balanced the public necessity of the regulation against the degree of the intrusion. The search policy in each instance was found improper. A major problem with the search policies in both the COLLIER and WHEATON cases was that they were carried out at random. Referring to airport and courthouse searchs, the Court in WHEATON said that '(s)ince all persons passing through the area where the search is undertaken are treated equally, no stigma attached to embarrass the individual subjected to the security measure.' 46 L.W. at 2128. Thus any scheme of preventive searcher should be applied with absolute consistency.

In DOWNING V. KUNZIG, 454 F. 2d 1230 (6th Cir. 1972), cursory searchs of packages and briefcases on a condition of entry to the Detroit Federal Building were upheld. These warrantless searches were valid under the Fourth Amendment in part because their objective was limited—to prevent weapons or bombs to be carried into the building—and because an option was afforded the party entering the building—he could leave the package or briefcase with the security guard if he did not wish it to be examined. In the DOWNING case, the court took judicial notice of violence directed at Federal property. Thus the public necessity outweighed against the limited nature of the search and the limited restraint on movement made these preventive searches reasonable.

***2** Any scheme of preventive searches necessarily are going to be subject to close scrutiny. As the district court said in COLLIER:

No doubt wholesale searches of every person entering . . . could reduce the number of injuries occurring in those two facilities. But no court has ever approved a dragnet search of citizens based upon the justification that the danger of criminal conduct would be reduced, even in high crime areas where incidents of violence occur quite frequently.

414 F. Supp. at 1367.

The WHEATON court suggested a method by which such wholesale searches could be avoided:

If authorities determine that some form of search policy is required as a last resort . . ., such a policy should contain more safeguards for those who will be subject to it. Without seeking to define exactly what type of policy will pass constitutional muster . . . there are several alternatives readily apparent. All parcels, bundles and pocketbooks over a certain size could be banned from the Coliseum grounds, with appropriate notices to that effect . . .. Some form of check rooms . . . could be provided for parcels and other such objects, with a fee charged that would cover the cost of operation of such facilities.

46 L.W. at 2128.

Assuming that the requisite public necessity is present, a preventive search scheme should give the public adequate notice of the operation. Such notice was lacking in the COLLIER case and would appear to be a requirement for a policy of warrantless searches. Where the search is a condition of entry, or opposed to exit, the DOWNING and WHEATON cases suggest that the party entering the building should have the option of checking his bag or parcel at facilities provided for that purpose rather than be subjected to the search. If the person desires to carry the bag through security into the hospital then a standardized search of the bag could be carried out.

Assuming a person entering the building has elected to carry the bag or parcel through security and has submitted to a search of them, and so long as that person has notice that the bag or parcel will be searched on the way out of the building, then that person will have consented in effect to both searches—entry and exit.

Of course, there must be a public necessity that will justify imposing such a burden on the public. The search upon entry will require a wholly different justification than the search upon exit. On the one hand, the search upon entry must be for the health, safety and protection of patients, staff and visitors. On the other hand, the search upon exit would have as its purpose the prevention of wholesale theft of hospital supplies and equipment.

If the search policy is challenged, the Board of Trustees of the Medical University is going to have to demonstrate essentially two things: 1) that the threat involved to the hospital has materialized or will materialize in the absence of the preventive search scheme; and 2) 'the likelihood that the search procedure will be effective in averting the potential harm.' UNITED STATES V. SKIPWITH, 482 F. 2d 1272, 1275 (5th Cir. 1973). If both the above tests are not met the preventive search scheme should fail.

CONCLUSION

***3** The Medical University of South Carolina may require those entering and leaving the University Hospital to submit to searches of packages and bags as a condition of entering and leaving the hospital premises. These preventive searches are constitutionally justifiable where there is a demonstrable public purpose to be served and where persons subject to the search procedures have the option of avoiding the search by checking their bags and parcels upon entry into the building.

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