



ALAN WILSON
ATTORNEY GENERAL

March 24, 2020

Chief Mark A. Keel
South Carolina Law Enforcement Division
PO Box 21398
Columbia, SC 29221-1398

Dear Chief Keel:

Pursuant to the direction of Governor Henry McMaster in Executive Order 2020-13, issued March 23, 2020, you have consulted our Office in an effort to provide guidance to law enforcement regarding the interpretation, application, and enforcement of Section 16-7-10 of the South Carolina Code of Laws. Of course any application of this criminal statute necessarily will depend on the facts and circumstances of an individual case. In general, we advise the following.

Section 16-7-10 should be applied such that gatherings involving established, fundamental constitutional protections should be authorized, even if prudence dictates they be discouraged. *See City of Maquoketa v. Russell*, 484 N.W.2d 179 (Iowa 1992). We have previously opined that when a constitutional right is “fundamental in nature, the courts then invoke a so-called strict scrutiny test—thereby requiring that in order to survive constitutional scrutiny, the statute or ordinance be narrowly drawn to serve compelling governmental interests.” *Op. S.C. Att’y Gen.*, 1994 WL 136189 (March 3, 1994) (citing *Shapiro v. Thompson*, 394 U.S. 618, 634, 89 S.Ct. 1322, 1331, 22 L.Ed.2d 600, 615 (1969)).

Some examples of these fundamental constitutional protections are the freedom of religion inherent in a church or other religious meeting, or a wedding or funeral; the constitutional protections of the family unit; and the freedom of assembly for political purposes. *See; e.g., Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520 (1993); *Carey v. Population Services, Intern.*, 431 U.S. 678 (1977); *Hague v. Committee v. Indus. Organization*, 307 U.S. 496 (1939). These enumerated examples are not an exhaustive or exclusive list.


Moreover, the Governor has informed the Attorney General that it was never the intent of his executive order to deal with anything other than boisterous crowds and unruly behavior. He has stated in no uncertain terms that the restriction on activities was not intended, and should never be construed, to infringe upon any fundamental constitutional rights. *See also U.S. v. Robel*, 389 U.S. 258 (1967).

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Section 16-7-10 is intended in part to maintain good order during extraordinary times of emergency. The unique nature of a pandemic is such that SCDHEC and epidemiologist are strongly urging against even the most orderly large gatherings. However, the enforcement of this criminal statute must yield to established constitutional limitations.

The statute was intended to keep the peace not keep citizens from exercising their constitutional rights. It should be read and applied by officers with that in mind. In short: in case of conflict between the statute and fundamental constitutional liberties, those liberties must prevail.

Sincerely,



Robert D. Cook
Solicitor General