



ALAN WILSON  
ATTORNEY GENERAL

November 2, 2020

The Honorable Todd Rutherford  
Member  
South Carolina House of Representatives  
335-B Blatt Building  
Columbia, South Carolina 29201

Dear Representative Rutherford:

We received your letter requesting an opinion regarding Executive Order 2020-50 (the "Executive Order") issued by the Governor on August 2, 2020. The Executive Order pertained to the ongoing state of emergency declared by Governor Henry McMaster due to the Covid-19 pandemic. Specifically, you refer to a portion of the Executive Order prohibiting and dispersing the congregation or gathering of people. By way of background, you informed us that the City of Columbia enacted an ordinance, Ordinance 2020-077, which you state "penalizes landlords for the conduct of their tenants, including the tenant's failure to comply with the Executive Order." Thus, you ask the following questions regarding the scope of the Executive Order:

1. Whether law enforcement can enforce the order and disperse gatherings of three or more in a house?
2. If not, whether the Executive Order requires all people to occupy or reside in the house?
3. In determining if a person is in their house, what differentiates between the status of the tenant or the owner?
4. If not, does a tenant, i.e. a non-owner occupying and/or residing in a premises with the express permission of the owner, include within the meaning of "their houses"?

#### **Law/Analysis**

The Executive Order contains restrictions on gatherings that for example limit mass gatherings to fifty percent (50%) of the locations occupancy limit as determined by the fire marshal or two hundred and fifty (250) persons, whichever is less. Exec. Order of the S.C. Gov. No. 2020-50 § 4. The order defines "gatherings" for purposes of the order under section 4C and includes planned and spontaneous events occurring inside or outside. Id. The Executive Order also includes an

enforcement provision in section 14, which you cite to in your letter. Exec. Order of the S.C. Gov. No. 2020-50 § 14. This provision states:

- A. I hereby authorize any and all law enforcement officers of the State, or any political subdivision thereof, to do whatever may be deemed necessary to maintain peace and good order during the State of Emergency and to enforce the provisions of this Order and any prior or future Orders issued by the undersigned in connection with the State of Emergency.
- B. I hereby authorize, order, and direct any and all enforcement officers of the State, or any political subdivision thereof, in accordance with section 16-7-10 of the South Carolina Code of Laws and other applicable law, to prohibit or disperse any congregation or gathering of people, unless authorized or in their homes, in groups of three (3) or more people, if any such law enforcement official determines, in their discretion, that any such congregation or gathering of people poses, or could pose, a threat to public health. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who “refuse[s] to disperse upon order of a law enforcement officer,” “willfully fail[s] or refuse[s] to comply with any lawful order or direction of the undersigned in connection with the State of Emergency “is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.” I further authorize and instruct SLED, in consultation with the Attorney General of South Carolina, to provide any necessary and appropriate additional or supplemental guidance to law enforcement agencies, departments, or officers of the State, or any political subdivision thereof, regarding the interpretation, application, or enforcement of section 16-7-10 of the South Carolina Code of Laws.

Id.<sup>1</sup>

Because this provision in the Executive Order is based upon section 16-7-10 of the South Carolina Code (2015), we look to this statute to answer your questions. As partially quoted in the Executive Order, section 16-7-10 of the South Carolina Code states in pertinent part:

(A) In any area designated by the Governor in his proclamation that a state of emergency exists, and during the duration of the proclamation, it is unlawful for a person to:

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<sup>1</sup> Executive Order 2020-63, issued by the Governor subsequent to your opinion request on October 3, 2020, superseded, rescinded, and replaced Executive Order 2020-50. Exec. Order of the S.C. Gov. No. 2020-63. However, section 4 of Executive Order 2020-63 contains substantially similar provisions regarding gatherings and section 14 contains the same language regarding enforcement. Id.

(1)(a) violate a provision in the proclamation including, but not limited to, any curfew set forth by the proclamation;

(b) congregate, unless authorized or in their homes, in groups of three or more and to refuse to disperse upon order of a law enforcement officer; or

(c) wilfully fail or refuse to comply with any lawful order or direction of any law enforcement officer.

A person violating the provisions of this item is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.

S.C. Code Ann. § 16-7-10 (emphasis added).

In March, this Office received a request from the South Carolina Law Enforcement Division asking for guidance on section 16-7-10 due to an Executive Order issued by the Governor on March 23, 2020. Op. Att’y Gen., 2020 WL 2044369 (S.C.A.G. Mar. 24, 2020). In that opinion, we advised:

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.

Accordingly, section 16-7-10 gives law enforcement officers a means to maintain good order during an emergency. In accordance with our earlier opinion, the need to maintain order especially applies to large gatherings during the ongoing pandemic. With this understanding of section 16-7-10, we now turn to your specific questions.

First, you ask whether the Executive Order gives law enforcement the authority to disperse gatherings of three or more in a house. Section 16-7-10 gives law enforcement the authority to disperse gatherings unless they are authorized or unless they are “in their homes.” “In construing a statute, its words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute’s operation.” Adkins v. Comcar Indus., Inc., 323 S.C. 409, 411, 475 S.E.2d 762, 763 (1996). Moreover, “the words used should be given their generally accepted meaning.” Greenville Enter. v. Jennings, 210 S.C. 163, 167, 41 S.E.2d 868, 869 (1947). A “home” is generally defined as “one’s place of residence” or domicile. See Merriam-Webster’s Online Dictionary, “home” (last visited October 26, 2020) <<http://www.merriam-webster.com/dictionary/home>>. As our Supreme Court explained in Clarke v. McCown, 107 S.C. 209, 92 S.E. 479, 480 (1917),

The residence of a person is a mixed question of law and fact; and the intention of that person with regard to the matter is deemed the controlling element of decision. His intention may be proved by his acts and declarations, and perhaps other circumstances; but when these, taken all together, are not inconsistent with the intention to retain an established residence, they are not sufficient in law to deprive him of his rights thereunder, for it will be presumed that he intends to continue a residence gained until the contrary is made to appear, because inestimable political and valuable personal rights depend upon it.

Section 16-7-10 specifically allows law enforcement to order and disperse gatherings of three or more. The only exceptions listed in section 16-7-10 are if the person or persons have prior authorization to congregate or they are in their home.<sup>2</sup> Thus, if the individual or individuals have the requisite intent to reside at the home, we believe they would not be subject to the enforcement provisions in section 16-7-10.

Next, you inquire as to whether the exemption for those “in their homes” requires “all people to occupy or reside in the house?” The Legislature made the decision to include the word “their” when referring to the homes. Our courts instruct us that “[w]e should consider . . . not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law.” Whitner v. State, 328 S.C. 1, 6, 492 S.E.2d 777, 779 (1997). “Their” implies the home the person resides in, not just any home. Accordingly, we believe to be exempt from the repercussions of section 16-7-10(A)(1)(b), one must be present in their own home.

Based on this response, you also inquire as to whether it makes a difference if the person in question is a tenant or an owner of the home. As we previously mentioned, one’s sense of “home” is premised on one’s own intentions and actions. We can certainly think of factual scenarios in which one who is a tenant considers the rental in which they reside as their home and also scenarios in which a landlord, who owns property, has no intention of residing at such property. Nevertheless, whether or not a particular individual considers property to be their home is a question of fact, which is beyond the scope of an opinion of this Office. Op. Att’y Gen., 2010 WL 928445 (S.C.A.G. Feb. 18, 2010) (stating the determination of facts is beyond the scope of an opinion of this office). As such, we cannot not make any individual determinations, but rather can only acknowledge that a court could determine that both owners and tenants have the intent to make a property their home. As such, we believe both homeowners and tenants would be treated the same in regard to enforcement under section 16-7-10.

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<sup>2</sup> In addition to those exceptions provided for in section 16-7-10, in our March 24, 2020 opinion, we clarified that enforcement under this statute must also yield to established constitutional limitations.

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In your final question, you ask whether a tenant could be exempt under the provisions of section 16-7-10 as being “in their home.” As previously stated, we cannot make judgments on a particular tenant. However, if the tenant’s intent and actions indicate they treat a property as their home, we believe they could be exempt from implications of section 16-7-10(A)(1)(b) prohibiting crowds from congregating after being told to disperse by law enforcement officials.

### **Conclusion**

The provision in the Executive Order giving law enforcement the authority to prohibit and disperse gatherings and the congregation of crowds is based upon the authority given under section 16-7-10 of the South Carolina Code. As we stated in our March 24, 2020 opinion, this provision is intended “to maintain good order during times of emergency.” *Op. Att’y Gen.*, 2020 WL 2044369 (S.C.A.G. Mar. 24, 2020). With this intention in mind, and in accordance with the plain and ordinary meaning of the words used in the statute, we believe the portion of the statute exempting persons “in their homes” applies to persons who have the requisite intent and actions to show their intent to reside in the home. Because the statute specifies “their” home, we believe this exemption only applies to persons present at their own home, but do not believe this exemption differentiates between owners and renters residing in the home.

You mentioned your inquiry is in light of an ordinance recently passed by the City of Columbia, which you describe as making landlords responsible for tenants who fail to comply with the Executive Order. We were not asked to address or interpret the ordinance, but would like to emphasize that section 16-7-10(1)(b), as referenced in the Executive Order, allows law enforcement to prohibit crowds from congregating and imposes criminal penalties on those who refuse to obey law enforcement officers’ orders to disperse. This provision does not generally make it illegal for crowds to gather. In fact, the Executive order specifically addresses gatherings in section 4, which we mention above. Therefore, it is important to keep in mind that unless law enforcement has prohibited groups from congregating or has sought to disperse a crowd, a person or group may not be in violation of this particular portion of the Executive Order.

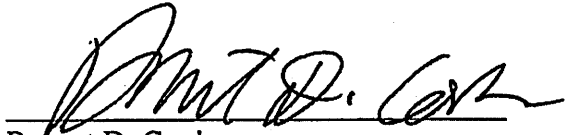
Sincerely,



Cydney Milling  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "R.D. Cook", written over a horizontal line.

Robert D. Cook  
Solicitor General