



HENRY McMASTER  
ATTORNEY GENERAL

February 17, 2009

David S. Goble, Director  
South Carolina State Library  
P. O. Box 11469  
Columbia, South Carolina 29211

Dear Mr. Goble:

In a letter to this office you requested clarification regarding the laws governing trespass in this State as they relate to public library buildings, including the State Library. You referenced the following:

[a]ll of our public libraries and the State Library have codes of conduct governing patron behavior while using the library's facility and services. These codes cover such things as noise, solicitation, possession of weapons or alcohol, etc.

[w]hen a patron violates the code he or she is asked to stop the behavior. Upon failure to do so, and depending on how egregious the behavior is, the patron is trespassed from the building. Although the procedure for trespassing someone varies from library to library, it generally involves the filing of an incident report with the county or city police upon first occurrence of a violation. On the second occurrence police assistance is requested. Upon arrival, the police present a written notice of trespass to the offending patron.

You stated that it has been brought to your attention that S.C. Code Ann. § 16-11-620 which establishes the offense of trespass does not address trespass from public property and, therefore, does not address the violation of a trespass notice from public property. Such provision states as follows:

[a]ny person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall,

Mr. Goble  
Page 2  
February 17, 2009

on conviction, be fined not more than two hundred dollars or be imprisoned not more than thirty days.

In its decision in State v. Hanapole, 255 S.C. 258, 178 S.E.2d 247 (1970), the State Supreme Court ruled that Section 16-11-620 applies only to private property and has no applicability to public property. In that case, the Court further stated that since the trespass statutes "...applies only to private property, a conviction thereunder for an alleged trespass upon public property is not warranted and cannot be sustained." Ibid.

You referenced that in its decision in the case of In the Interest of Joseph B., 278 S.C. 502, 299 S.E.2d 331 (1983), the Court cited its decision in Hanapole but indicated that its holding would not apply to public schools. The basis for its decision were the provisions of S.C. Code Ann. § 16-11-530 which state in part:

[f]or the purpose of determining...whether or not there has been a trespass upon [school] property as this offense is defined in § 16-11-600 and for all prosecutions under...other statutes of a like nature, the trustees of the respective school districts in this State in their official capacity shall be deemed to be the owners and possessors of all school property. (emphasis added).

299 S.E.2d at 332. Therefore, the court ruled that

...for purposes of a prosecution for trespass under section 16-11-620, public school land is "owned and possessed" by the respective school district trustees pursuant to section 16-11-530. In other words, a trespass upon school lands is a trespass "on the premises of another" as proscribed by section 16-11-620...Even though public school land is owned by a political subdivision, it lacks the hallmarks which attend other property of the public. It is not devoted to the use of the entire public nor is there a universal right of access to it.

Ibid. As noted in an opinion of this office dated May 5, 1998, consistent with Section 16-11-530, "[p]ublic school land is owned and possessed by the respective school district and does not satisfy the traditional characteristics of a public place. Thus, public school property qualifies as 'premises of another.'"

Referencing the above, you have raised the following questions:

Mr. Goble  
Page 3  
February 17, 2009

1. Libraries are educational facilities and school children are primary users of the public library. Is it possible that public libraries could rely on the same protections afforded public schools in Section 16-11-620?
2. The State Library serves school age children, albeit to a lesser degree than county public libraries. Would the State Library be able to take advantage of the protections afforded public schools in Section 16-11-620?
3. If public libraries are not able to trespass patrons or enforce violations of trespass under Section 16-11-620, is there another law that meets their needs?
4. If the South Carolina State Library is not able to trespass patrons or enforce violations of trespass under Section 16-11-620, is there another law that meets its needs?

As to your questions, in the opinion of this office, Section 16-11-530 is specific as to school property and, therefore, Section 16-11-600 could not be read to afford the same protections to public libraries, including the State Library, as provided schools by such statutes. As stated in a prior opinion of this office dated September 19, 2008,

[a]ccording to our Supreme Court in Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) (quoting *Black's Law Dictionary* 602 (7th ed. 1999)), “[t]he canon of construction ‘expressio unius est exclusio alterius’ or ‘inclusio unius est exclusio alterius’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’” Moreover, “the court cannot add to [statutes] other words which would give them a different meaning without making, instead of construing, the statute.” Independence Ins. Co. v. Indep. Life & Acc. Ins. Co., 218 S.C. 22, 34, 61 S.E.2d 399, 405 (1950).

Therefore, inasmuch as Section 16-11-530 is specific as to school property and the applicability of the law of trespass to such property is dependent upon such statute, such provision cannot be read more broadly to expand its applicability to public libraries, including the State Library.

As to your question of if public libraries and the State Library are not able to utilize the provisions of Section 16-11-620, is there another law that would meet its needs, I am unaware of any State statutes specific as to such libraries that would address such concerns. Of course, there are

State statutes, such as public disorderly conduct<sup>1</sup> and refusing to leave certain public premises during hours when they are regularly closed<sup>2</sup>, which may be useful in certain specific situations. However, I would note that S.C. Code Ann. § 60-1-40(e) authorizes the State Library Board to “...promulgate regulations necessary for carrying out the provisions of this chapter.” Pursuant to S.C. Code Ann. § 60-1-50(b), the director of the State Library is authorized to “recommend to the State Library Board policies and regulations necessary for carrying out the provisions of this chapter and execute those adopted by the board.” S.C. Code Ann. § 60-1-100 states in part that

[t]he services and resources of the South Carolina State Library and any public library receiving state and federal funds administered by the State Library are free for use by all persons living within South Carolina or the county or region served...The use of a library is subject to regulations adopted by the library’s board....

In Kreimer v. Bureau of Police for the Town of Morristown et al., 958 F.2d 1242 (3<sup>rd</sup> Cir. 1992) the court upheld a rule requiring library patrons not engaged in reading, studying or using library materials to leave as reasonable and perfectly valid against constitutional challenges. Therefore, you may wish to consider the promulgation of regulations specific as to the code of conduct you would like to be applicable to the State Library.

As to county libraries, S.C. Code Ann. § 4-9-37(b) provides that the board of trustees of a county library shall “...[a]dopt regulations necessary to insure effective operation, maintenance, and security of the property of the library system.” See also: Section 60-1-100 cited above. In the opinion of this office, consistent with Kreimer, supra, the county board could adopt regulations regulating conduct in its county library.

Counties could also consider the adoption of ordinances which would address their concerns regarding conduct in their libraries for their specific counties. Pursuant to S.C. Code Ann. § 4-9-25, “[a]ll counties of the State...have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them

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<sup>1</sup>S.C. Code Ann. § 16-17-530 provides that  
[a]ny person who shall (a) be found on any highway or at any public place or public gathering in a grossly intoxicated condition or otherwise conducting himself in a disorderly or boisterous manner, (b) use obscene or profane language...at any public place or gathering...shall be deemed guilty of a misdemeanor....

<sup>2</sup>See: S.C. Code Ann. § 16-11-630.

Mr. Goble  
Page 5  
February 17, 2009

necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them....". Therefore, pursuant to that grant of authority, in the opinion of this office, counties could adopt ordinances relative to library conduct.

If there are any questions, please advise.

Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



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