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State of Louisiana
DEPARTMENT OF JUSTICE
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OPINION 15-0147

Hon. Nancy Landry
State Representative
District 3
P.O. Box 53529
Lafayette, LA 70505

16 - CRIMINAL LAW - Crimes and Offenses
97 - SCHOOLS & SCHOOL DISTRICTS - Property,
Contracts, etc.

The restrictions described by La. R.S. 14:91.2 relative to certain sex offenders and school property do not include locations where home study programs are conducted.

Dear Representative Landry:

You have requested an opinion from our office regarding the application of La. R.S. 14:91.2, which places restrictions on certain sex offenders with respect to being physically present or establishing a residence near schools.

Specifically you ask whether the restrictions in La. R.S. 14:91.2 apply to residences where children are educated in a home study program.

La. R.S. 14:91.2 establishes the crime of "unlawful presence of a sex offender" and criminalizes, inter alia, the presence or residence of certain sex offenders within one thousand feet of a public or private elementary or secondary school.

The specific provisions pertinent to your inquiry are found in La. R.S. 14:91.2(A)(1) and (2), which read as follows:

The following acts when committed by a person convicted of a sex offense...when the victim is under the age of thirteen years shall constitute the crime of unlawful residence or presence of a sex offender:

- (1) The physical presence of the offender in, on, or within one thousand feet of the school property of any public or private elementary or secondary school...
- (2) The offender establishing a residence within one thousand feet of any public or private elementary or secondary school or child care facility as defined in R.S. 46:1403.

La. R.S. 14:91.2(E)(6) defines "school property" as "any property used for school purposes, including but not limited to school buildings, playgrounds and parking lots."

We turn to well-settled principles of statutory interpretation to answer your questions. Legislation is the solemn expression of the will of the legislature. The determination of the legislature's will regarding legislation must start with the language of the statute itself. The words used must be interpreted as they are generally understood. When the words of a statute are clear and unambiguous, and the application of the law does not lead to absurd consequences, the statute should be applied as written.¹

Additionally, since La. R.S. 14:91.2 is a penal statute, it must be strictly construed and given a narrow interpretation.² As the Louisiana Supreme Court has stated:

The principle of lenity is premised on the idea that a person should not be criminally punished unless the law provides a fair warning of what conduct will be considered criminal. The rule is based on principles of due process that no person should be forced to guess as to whether his conduct is prohibited.³

It is the opinion of this office that La. R.S. 14:91.2 does not apply to or encompass locations where home study takes place. The statute at issue refers explicitly in subparagraph (A)(1) to "school property of **any public or private elementary or secondary school**." (emphasis added). The definition of "school property" in subparagraph (E)(6) relates back to the term "school property" in subparagraph (A)(1) and thus refers only to property in the custody or control of a public or private elementary or secondary school.

Since the words of this statute are clear and unambiguous, and the application of the statute according to their plain meaning does not lead to absurd consequences, it is the opinion of this office that the restriction in La. R.S. 14:91.2 applies only to public or private elementary schools and their property, not to locations where home study is conducted.

¹ *First Nat. Bank, USA v. DDS Const., LLC*, 2011-1418 (La. 1/24/12), 91 So. 3d 944, 953 (internal citations omitted).

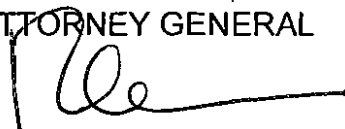
² *State v. Anders*, 01-0556, p. 5 (La.6/21/02), 820 So.2d 513, 516; *State v. Carr*, 1999-2209 (La. 5/26/00), 761 So. 2d 1271, 1274.

State v. Carr, 99-2209 (La. 2000) 761 So. 2d 1271, 1274.

We hope this sufficiently answers your inquiry; however, if we may be of any further assistance, please do not hesitate to contact our office.

With best regards,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

A handwritten signature in black ink, appearing to read 'Patricia H. Wilton', written over a horizontal line.

BY:

Patricia H. Wilton
Assistant Attorney General

JDC:PHW