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STATE REPRESENTATIVE
DISTRICT 83

The State of Texas
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Austin, Texas

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Honorable John Cornyn
Attorney General

Opinion Committee
Supreme Court Building
P.O. Box 12548
Austin, TX 78711-2548

RQ-0623-JC

FILE # ML-42850-02
I.D. # 42850

Re: Opinion Request

Dear Sir:

A municipality complies with requirements of the Texas Code of Criminal Procedure regarding the publication of certain information concerning convicted sex offenders as set forth in Chapter 62 of that code.

The municipality has an access channel on the local cable television network. The municipality has expressed an interest in broadcasting certain information regarding registered sex offenders on that public access channel. Certain questions as to the appropriateness of this proposal have been presented. The governing body of the municipality has asked that an opinion be sought from your office.

The questions presented are as follows:

1. In light of the language of Chapter 62 of the Code of Criminal Procedure regarding the methods by which information concerning convicted sex offenders is to be disseminated, is it permissible for a local government to broadcast the same information on a local cable television channel.
2. Assuming that the answer to question 1 is in the affirmative, and in light of the language of Chapter 62 of the Code of Criminal Procedure regarding publicizing the numeric risk factor of convicted sex offenders, is it permissible for the numeric risk factor to be included in information broadcast on a local cable television channel.

Section 62.02 of the Texas Code of Criminal Procedure specifies information which must be included on a sex offender's registration form. Upon completion of the registration process, Section 62.04 (g) states that the local law enforcement authority shall include certain information in the mandatory newspaper notification. The information specifically includes the numeric risk level, placing this information in the public domain.

Maintenance of a computerized database is required by Section 62.08. This database shall contain only the information required for registration as set forth in Section 62.02. Omitted is the risk level assessment information. A local law enforcement agency is required to release the public information contained in the database upon written request.

The legislature has specified the two methods of release referred to above and release pursuant to a request for information. There is no specific statutory authority to release by means of a different medium.

Please also note the apparent inconsistency in the statute. The provision which applies to the newspaper notice mandates release of the numeric risk level. The provision which applies to the computerized database states what shall be released and omits the risk level. At least as to the newspaper release of information, which includes the numeric risk level, all information relating to sex offenders appears to be within the public domain.

Section 311.011 of the Texas Government Code, and numerous citing cases, make it clear that statutory provisions must be read in context and construed according to the rules of grammar and common usage. As discussed above the legislature has clearly specified the methods and scope of dissemination of information relating to convicted sex offenders. On the other hand, the information appears to be clearly in the public domain once it is published in the newspaper.

Of import to consideration on this topic is the Court of Criminal Appeals of Texas decision in *Carlos Rodriguez A/K/A Jose Luna v. The State of Texas*, No. 1164-01 issued on September 20, 2002 as to the Texas sex offender registration statute. The Court ruled that the statute does not violate the Ex Post Facto Clauses of the United States and Texas Constitutions. In so doing, the Court highlighted and explained the current controversy in this country over these registration and notification statutes.

While the sex registration and notification statute in this jurisdiction was not stricken as unconstitutional by the Court of Criminal Appeals of Texas, on a national level, the issue is far from settled.

For example, the 9th Circuit Court of Appeals in *Doe I and Doe II v. Otte and Bothlho*, 259 F.3d 979 (9th Cir. 2001) held contrarily to *Rodriguez*. In this case, the 9th Circuit held that the Alaska sexual offender notification statute violated the Ex Post Facto Clause in the Alaska's system of posting all sex offenders' information on the internet rendered the statute punitive and excessive in information on the internet rendered the statute punitive and excessive relation to the public safety purpose which it sought to achieve. The Court found that the Alaska statute failed to tailor the provisions of the statute to the risk posed by the offender. The Otte case has been accepted by the U.S. Supreme Court for consideration in the upcoming session.

In *Doe and Poe v. Dept. of Public Safety on Behalf of Lee, Office of Adult Probation on behalf of Bosco, and Armstrong*, 271 F.3d 38 (2nd Cir.2001), the Second Circuit struck Connecticut's sexual offender registration law holding that the law violated the Due

Process Clause of the Fourteenth Amendment to the United States Constitution. The Second Circuit found that while there is a pressing need to disseminate information about former sex offender, principally in order to protect the health and welfare of the state's children, the Connecticut statute was too blunt to achieve that end. It failed to accommodate the constitutional rights of persons formerly convicted of a wide range of sexual offenses who are tagged as likely to be currently dangerous offenders, irrespective of whether or not they were. Of note in the court's holding is that the offenders were not provided with a hearing on whether they posed a current danger.

Without belaboring the issue, I might add that controversy is brewing in other jurisdictions, including Kansas, Michigan, New York, the District of Columbia, and Massachusetts.

Thank you in advance for your response to the questions presented above.

Sincerely,

Steven Lopez
DIST 83