



2000-126

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OFFICE OF THE ATTORNEY GENERAL

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April 13, 2000

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Honorable Edmund M. Sexton, Sr., Sheriff
Tuscaloosa County Sheriff's Office
714½ Greensboro Avenue
Tuscaloosa, Alabama 35401

Community Notification Act –
Residence Requirements

The Act does not absolutely prohibit sex offenders from residing with minors.

The Act focuses on a sex offender establishing a residence or living accommodation with a minor.

The legality of a residence is determined only at the time the residence is established.

To establish a residence or living accommodation, a sex offender must affirmatively act to do so.

The birth of a child into a residence already lawfully established by a sex offender does not cause that offender to again "establish a residence or living accommodation" for purposes of the Act.

Dear Sheriff Sexton:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

If a convicted sex offender establishes a legal residence and, at some point in time later, a child is born to another resident of this house, does the birth change the status of this as a legal residence? Is he required to move?

FACTS AND ANALYSIS

The facts pertinent to this opinion request indicate that a convicted adult sex offender was released from prison and moved to Tuscaloosa County in June 1997. There he established a residence with his mother, brother, and sister-in-law. At that time, no minors resided at that location, and no other circumstances rendered the offender's residence unlawful. In 1998 the offender's sister-in-law gave birth to a child. Subsequently, the offender has lived with that child at the same residence he lawfully established in 1997.

The Community Notification Act ("the Act") does not absolutely prohibit sex offenders from residing with minors. Rather, the Act, subject to certain limited exceptions, proscribes an adult criminal sex offender "establishing a residence or any other living accommodation where a minor resides." ALA. CODE §§ 15-20-26(c) (Supp. 1999). Thus, the Act focuses not on an offender's residence *per se*, but on his or her establishing a residence or living accommodation. Moreover, as this Office has consistently stated, the legality of a residence is determined only at the time the residence is established. See Attorney General's Opinion to Honorable William C. Young, dated October 29, 1998, A.G. No. 99-00029 at 3.

In the question presented, it is evident that the offender lawfully resided with family members in Tuscaloosa County from the time of his release from prison in 1997 at least until the birth of his sister-in-law's child in 1998. What remains unresolved, however, is the issue of whether the birth of that child caused the offender to establish a new residence or living accommodation for purposes of the Act. If a new residence or living accommodation was established by the birth of the child, such would have rendered the offender's residence unlawful. See ALA. CODE §§ 15-20-26(c) (Supp. 1999). On the other hand, if no new residence or living accommodation was so established, the offender's initial residence, established in 1997, remains lawful, and he may continue to live with his sister-in-law's child.

Neither the Act nor Alabama case law defines what constitutes "establishing a residence or living accommodation" in such a way as to provide any useful guidance in answering the question now presented. Consequently, the plain language of the statute, particularly section 15-20-26(c) of the Code of Alabama, must be examined to determine whether the birth of a child into a household causes an adult criminal sex offender already lawfully residing there to establish a new residence or living accommodation for purposes of the Act. *See Ex parte T.D.T.*, 745 So. 2d 899, 903 (Ala. 1999).

Webster's defines the verb "establish," in part, as "to bring into existence" or "bring about." *Webster's Ninth New Collegiate Dictionary* 425 (1990). Significantly, these meanings connote some affirmative action that is to be undertaken. Thus, one can only establish something by actively working to bring about a particular result. Corollarily, one cannot establish anything by mere acquiescence or passivity.

In the question presented, there is no contention that the offender at hand has actively done anything to bring about the events that have led to a minor child's sharing his place of residence. To the contrary, from the offender's standpoint, it appears merely fortuitous that his sister-in-law gave birth to a child after he lawfully established his residence in 1997. Moreover, there is no indication that the offender has deliberately orchestrated establishing his residence for the purpose of circumventing the prohibition of section 15-20-26(c) of the Code of Alabama. Therefore, under these circumstances, it cannot be said that the offender has established a new residence or living accommodation for purposes of the Act. Accordingly, the residence he lawfully established in 1997 remains lawful today, since the birth of his sister-in-law's child has alone done nothing to cause the offender to establish a new residence or living accommodation.

CONCLUSION


The birth of a child into a residence already lawfully established by a criminal sex offender does not cause that offender to again "establish a residence or living accommodation" for purposes of the Act. Therefore, the offender's already-established residence remains lawful, and he may continue to reside in the same household as the newborn child.

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I hope this sufficiently answers your question. If this Office can be of further assistance, please contact Scott L. Rouse of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:


CAROLJEAN SMITH
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