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Postscript: Sex Offenders Living Near Schools

by Amy J. Borman and Karen E. Wabeke

In our October 2007 newsletter, we reported to you on the controversy surrounding Ohio's Sex Offender Registration and Notification (SORN) statute, located at Ohio Revised Code 2950.034. The United States District Court for the Northern District of Ohio ruled in September 2007 that the Ohio law prohibiting sex offenders from living within 1,000 feet of a school is unconstitutional with respect to those who committed their crimes before the law took effect in 2003 (*Mikaloff v. Walsh*). We mentioned in the article that the Ohio Supreme Court had heard arguments on the issue in a related case in October 2007.

The Court's decision in that related case, *Hyle v. Porter*, was issued in February 2008 and was consistent with the holding in *Mikaloff*. The Supreme Court held the residency statute does not apply retroactively. Therefore, it does not affect an offender who purchased his or her home and committed his or her crime before the law took effect. In its ruling, the Court avoided deciding whether such a law, if made expressly retroactive by the legislature, would violate the Constitution's prohibition against retroactive or ex post facto laws.

This leaves open the possibility for the legislature to revisit the statute and attempt to render it expressly retroactive. The Ohio Attorney General's Office, in fact, issued a statement following the decision indicating that "[w]e are going to urge the legislature to take another look" at the issue. In the meantime, the Supreme Court's decision in *Hyle v. Porter* means that potentially hundreds of registered sex-offenders who committed their crimes before July 31, 2003, and who were already living within 1,000 feet of a school at that time will not have to move.

For more information on these decisions, please contact Ms. Borman or Ms. Wabeke at our Toledo office (419-241-6000). The October 2007 article referenced can be found on our web site (www.eastmansmith.com).



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