Dinsmore&Shohl LLP
ATTORNEYS

Ohio Municipalities and Sex Offender Residency Restrictions

September 9, 2010

D. Michael Crites

In recent weeks, questions have arisen regarding what a municipality may do when a convicted sex offender chooses to reside within the municipal border. These questions are legitimate, and it is worth our time to fully understand what both the municipality and its citizens can and should do in the face of real and perceived threats to the safety and welfare of our children.

State law provides that a municipality may prevent sex offenders from residing in certain areas. The General Assembly first enacted sex offender residency restrictions effective July 31, 2003. At that time, the restrictions allowed municipalities to prohibit sex offenders from residing within 1,000 feet of any "school premises." In July 2007, the General Assembly expanded the scope of the law to allow a municipality to prevent sex offenders from residing within 1,000 feet of a preschool or child day-care center. Therefore, as a general matter under current law, the municipality may initiate legal proceedings to prevent a sex offender from residing within 1,000 feet of any school, preschool, or child day-care center.

As is often the case in legal matters, application of the general rule depends on the facts of a particular case. One issue that has received considerable attention from Ohio courts is whether the residency restrictions can be applied to offenders that committed their crimes before the date the statute went into effect. Ohio courts, including the Supreme Court of Ohio, have held that the residency restrictions do not apply to sex offenders that committed their offenses before the statute's effective date, which was July 31, 2003 for the school restriction and July 1, 2007 for the preschool and day-care restrictions. In the 2008 Ohio Supreme Court case *Hyle v. Porter*, the sex offender at issue was convicted of sex offenses in 1995 and 1999. Both offenses occurred several years before the General Assembly imposed residency restrictions on sex offenders. When local authorities sought to permanently prevent the offender from occupying his residence, which was within 1,000 feet of a school, the offender argued that the statute could not be applied to him. The Supreme Court of Ohio agreed and held that General Assembly failed to write the statute in a way that would make it apply retroactively. Therefore, the court held that the statute did not apply to an individual who bought his home and committed his offense before the effective date of the statute. In its opinion, the court put the burden on the General Assembly to include "strong and unmistakable declarations of retroactivity" within a statute if it wants the statute to apply retroactively.

Since the Supreme Court's decision in *Hyle v. Porter*, other Ohio courts have concluded that the residency restriction cannot be applied retroactively, even when the offender did not reside at the location in question before July 31, 2003. For example, in the 2008 case *Vandervoot v. Larson*, the Fifth District Court of Appeals held that the statute cannot be applied retroactively even if an offender did not purchase or own his residence before the statute's effective date. In the *Vandervoot* case, an offender was convicted of a sex offense in 1994. In December 2004, after the residency restriction went into effect, the offender moved within 1,000 feet of a school. The Fifth District Court of Appeals held that the city of Lancaster could not use the residency-restriction statute to force the offender to move. Other Ohio courts have reached the same conclusion.

Although state lawmakers are trying to address these recent court decisions by amending the statute,

amendments have not yet been enacted. Thus, at this time, the municipality's power to force sex offenders to move their residences is limited. The municipality may not prevent a convicted sex offender from residing within statutorily restricted areas if the offense was committed before July 31, 2003. Moreover, even if the law is amended, it could be susceptible to further attack on constitutional grounds.

The status of current law understandably may elicit frustration and, perhaps, anger. In this respect, we certainly applaud the efforts of state and local lawmakers as they work toward the implementation of appropriate policies that address real threats to the safety of our children. But however appropriate our legislative goals may be, we must remain aware that no law will ever be capable of guaranteeing the safety of our children. The real work of protecting our most valuable resource always has been done each day by parents, caregivers, and friends.