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Opinion No. 03-031

College and University Security Information Act — Criminal Sanctions

QUESTIONS

1. Whether the criminal sanctions imposed by Tenn. Code Ann. § 49-7-2204 apply to all provisions of the College and University Security Information Act (Act), including Tenn. Code Ann. § 49-7-2207, a recent amendment to the Act.

2. What is meant by "probable cause" for the purposes of Tenn. Code Ann. § 49-7-2207? Is this left completely to the discretion of school officials or must an objective standard be applied?

OPINIONS

1. The criminal sanctions imposed by Tenn. Code Ann. § 49-7-2204 apply to Tenn. Code Ann. § 49-7-2207.

2. "Probable cause" is a well-recognized phrase in criminal law and would be the standard for public and private college and university officials to use for the purposes of the College and University Security Information Act. The test of probable cause is objective.

ANALYSIS

1. Application of Criminal Sanctions Imposed by Tenn. Code Ann. § 49-7-2204

Tenn. Code Ann. § 49-7-2204 is short and specific. It reads as follows:

> Any official charged with the responsibility of complying with an institution's[1] obligations **under this part**, who fails to do so, commits a Class C misdemeanor. (Emphasis added.)

[1] The Act's definition of "institution" includes any college, community college or university, whether public or private, operating its own campus security force or other security arrangement on-campus . . . ." Tenn. Code Ann. §40-7-2202(1).

"This part" refers to Part 22 of Chapter 7 of Title 49. Tenn. Code Ann. § 49-7-2207 is a provision in Part 22. The General Assembly amended the Act by adding Tenn. Code Ann. § 49-7-2207, which reads as follows:

> It is the duty of each institution of higher education which has probable cause to believe that any student is committing or has committed any offense, a violation of which is a Class A misdemeanor or any of the five (5) categories of felonies as classified under § 40-35-110, upon the institution's grounds or within any building or structure under its supervision, to report such probable cause to the appropriate law enforcement officer.

Tenn. Code Ann. § 49-7-2204 places the criminal sanction on the official who has failed to comply. Tenn. Code Ann. § 49-7-2207 places the duty to report on the institution of higher education. Despite the difference in language, the result is the same because an institution is going to act and report through its officials. Thus, Tenn. Code Ann. § 49-7-2204 applies to Tenn. Code Ann. § 49-7-2207.

2. Determining Probable Cause

"Probable cause" is a well-recognized phrase in criminal law. The "probable cause" standard is defined in Tennessee case law. "A showing of probable cause generally requires reasonable grounds for suspicion, supported by circumstances indicative of an illegal act." *State v. Stevens*, 989 S.W.2d 290, 293 (Tenn. 1999). The test of probable cause is thus objective, *i.e.*, whether a reasonable person under the circumstances would conclude that the test has been satisfied. Accordingly, the statutory duty to report is triggered whenever an official covered by the Act possesses information that a reasonable person would believe amounts to probable cause.

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