

WESTON COUNTY & PROSECUTING ATTORNEY'S OFFICE

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October 27, 2021

Campbell County Sheriff
600 W. Boxelder Road
Gillette, Wyoming 82718

Re: Campbell County Public Library Report

Dear Sheriff Matheny:

The Weston County Attorney's Office has been requested, as a special prosecuting entity designated by the Campbell County Attorney's Office, to provide an opinion as to whether certain individuals associated with the Campbell County Public Library should be subject to criminal prosecution because of certain reading materials they have presented to the public for viewing and consumption. I present this correspondence to you relating to the same since your entity provided the initial report. The following four books were presented to this office for this determination based upon your report:

- Dating and Sex: A Guide for the 21st Century Teen Boy, By Andrew P. Smiler, PhD.
- Doing It!: Let's Talk About Sex. Consent. Virginity. Masturbation. LGBTQ. Sex Ed. Contraception. Healthy Relationships. Sex Shaming. Body Image. STIs. Sexual Pleasure, By Hannah Witton.
- Sex Is a Funny Word, A Book About Bodies, Feelings, and You, by Cory Silverberg and Fiona Smyth.
- How Do You Make a Baby?, by Anna Fiske.

I am also advised that a book entitled "This Book is Gay" was identified as potential material for review, but the same was not delivered.

This office has devoted a considerable amount of time to research any applicable criminal statutes and attendant case law relating to the allegations as presented to the Campbell County Sheriff's Office. I have also personally reviewed the subject material in question.

One particular statute that may be pertinent to this discussion is Wyoming Statute 6-2-318. Said statute provides, in pertinent part, as follows:

"Anyone who has reached the age of majority and who solicits, procures or knowingly encourages anyone less than the age of fourteen (14) years, or a person purported to be less than the age of fourteen (14) years, to engage in sexual intrusion

as defined in W.S. 6-2-301 is guilty of a felony, and upon conviction shall be imprisoned for a term of not more than five (5) years.”

A view of the statutory construction of this particular statute is vital to a determination as to whether the State can meet its constitutionally mandated burden of proving this potential crime beyond a reasonable doubt. The important word in this statute is whether these materials encourage individuals under the age of fourteen (14) years to “engage” in sexual intrusion. Black’s Law Dictionary provides that an “engagement” to do or omit to do something amounts to promise. A promise needs at least two separate actors---one to promise to do something or not do something with another person. Case law discussing this particular statute concerns an individual of the age of majority attempting to engage in some sort of sexual activity directly with someone under the age of fourteen. Furthermore, “sexual intrusion” as defined by W.S. 6-2-301 contemplates that one individual would attempt to obtain or engage in sexual arousal, gratification, or abuse with another individual directly. These materials are disseminated to the general public, and therefore there is no “engagement.” Accordingly, my office’s position is that the State of Wyoming could not meet its burden based upon this statute. As a matter of fact, reviewing at the statute as a whole, the State of Wyoming may not have even probable cause to institute criminal proceedings under this statute.

Another criminal statute that our office has reviewed is Wyoming Statute 6-4-302, which concerns promoting obscenity. Said statute makes it criminal to promote obscenity if one possesses obscene material with the intent of disseminating it or knowingly disseminates obscene material. The term “obscene” is clearly defined by Wyoming Statute 6-4-301(a)(iii) and requires a three-point determination based upon an “average person” standard: First, when applying contemporary community standards, taken as a whole, the material appeals to the prurient interest; second, when applying contemporary community standards, the material depicts or describes sexual conduct in a patently offensive way; and, third, taken as a whole, the material lacks serious literary, artistic, political or scientific value.

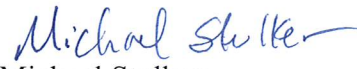
One would be hard pressed in a criminal prosecution to prove that the materials presented, when applying contemporary community standards and taking them as a whole, appeal to the prurient interest. The books in question do not, when applying contemporary community standards, criminally describe sexual conduct in a patently offensive manner and they may have scientific value. Accordingly, since these materials are not “obscene” as defined by Wyoming Law, the State of Wyoming could not commence criminal charges. This is in addition to the fact that W.S. 6-4-302 does not apply to any person who may produce, reproduce, possess, or disseminate obscene material in the course of bona fide public library activities or in the course of employment of such an organization. Therefore, those who caused these materials to be present in the Campbell County Public Library cannot be subject to criminal prosecution under this statute.

I have also reviewed, in detail, the entirety of any other potential criminal statutes and other law which may be applicable to this particular circumstance. After such further review, I have determined that no other law would provide a basis to institute criminal prosecution for the subject matter in question.

As a County and Prosecuting Attorney, I, as well as my office, am bound to certain ethical and constitutional considerations when exercising prosecutorial discretion. One, I cannot ethically bring criminal charges if the facts surrounding a certain matter are not supported by probable cause. Two, the State must consider the end result—whether the State can prove any allegations beyond a reasonable doubt. Because of these considerations, and after review of the subject books and applicable law, our office has concluded that those who presented these books for public dissemination, viewing, and consumption should not be subject to criminal prosecution.

Therefore, our office declines to pursue any criminal charges.

Respectfully,



Michael Stulken
Weston County and Prosecuting Attorney

cc: Campbell County Attorney's Office