



ALAN WILSON
ATTORNEY GENERAL

January 31, 2024

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Dear Mr. Hood:

We received your letter requesting an attorney general's opinion regarding service animals-in-training. Specifically, you ask three questions, which we address individually.

Law/Analysis

- 1. Does puppy raising, puppy training, bladder control training and general obedience training qualify an animal as an "assistance or guide dog in training" or a "service animal in training" under South Carolina law?**

Chapter 33 of title 43 of the South Carolina Code provides specific rights to blind and physically disabled persons in South Carolina. Included in these rights is the right to be accompanied by an "assistance dog." S.C. Code Ann. § 43-33-20(c) (2015). The law specifies:

Every handicapped person has the right to be accompanied by an assistance dog, especially trained for the purpose, in any of the places listed in item (b) of this section without being required to pay an extra charge for the assistance dog. Each handicapped person is liable for any damage done to the premises or facilities by the dog.

Id. As you mentioned in your letter, section 43-33-20(d) (2015) provides similar rights to assistance or guide dog trainers.

Every person who is a trainer of an assistance or guide dog, while engaged in the training of an assistance or guide dog, has the same rights and privileges with respect to access to public facilities and accommodations as blind and disabled persons, including the right to be accompanied by an assistance or guide dog or assistance or guide dog in training, in any of the places listed in item (b) of this section without being required to pay an extra charge for the

assistance dog. A person who uses premises or facilities accommodations accompanied by a dog under the authority of this item is liable for any damage done to the premises or facilities by the dog.

S.C. Code Ann. § 43-33-20(d). Section 43-33-40 of the South Carolina Code (2015) makes it unlawful for another person or his agent to deny or interfere with the rights of a blind or disabled person provided under section 43-33-20, which includes interfering with a trainer of assistance or guide dogs while they are engaged in training a dog.

You question whether basic obedience and/or house training qualifies as “the training of an assistance or guide dog” under section 43-33-20. We note, chapter 33 of title 43 does not specify the type of “training” being received by the assistance or guide dog to bring them under this provision. Therefore, we turn to the rules of statutory construction.

“The cardinal rule of statutory construction is that the intent of the legislature must prevail if it reasonably can be discerned from the words used in the statute.” Cabiness v. Town of James Island, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011). “These words must be construed in context and in light of the intended purpose of the statute in a manner which harmonizes with its subject matter and accords with its general purpose.” Id.

In re Manigo, 398 S.C. 149, 157, 728 S.E.2d 32, 35-36 (2012). Simply using the context of section 43-33-20(c), we presume the training involves teaching a dog to become an assistance or guide dog, not basic obedience or house training. Specifically, we believe the training entails teaching the dog how to guide or assist the blind or disabled person in public places.

This interpretation is supported by the fact that it is consistent with statutes protecting guide dogs and service animals. As our Supreme Court stated, “it is well settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result.” Beaufort Cnty. v. S.C. State Election Comm’n, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011). In 2003, the Legislature enacted provisions aimed at protecting guide dogs referred to as “Layla’s Law.” S.C. Code Ann. §§ 47-3-910 et seq. (2017 & Supp. 2023). Layla’s Law made it unlawful to interfere with the use of a guide dog or service animal. S.C. Code Ann. § 47-3-930 (2017). It defines “guide dog” as “a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons.” S.C. Code Ann. § 47-3-920(1) (2017). The Legislature amended Layla’s Law in 2019 to include the following definition of “service animal” or “service animal-in-training”:

an animal that is trained or that is being trained to do work or perform tasks for an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. A service animal is not a pet and is limited to a dog or a miniature horse. The work done or tasks performed must

be directly related to the individual's disability and may include, but are not limited to:

- (i) guiding an individual who is visually impaired or blind;
- (ii) alerting an individual who is deaf or hard of hearing;
- (iii) pulling a wheelchair;
- (iv) assisting with mobility or balance;
- (v) alerting others and protecting an individual if the individual is having a seizure;
- (vi) retrieving objects;
- (vii) alerting an individual to the presence of allergens;
- (viii) providing physical support and assistance with balance and stability to an individual with a mobility disability;
- (ix) helping an individual with a psychiatric or neurological disability by preventing or interrupting impulsive or destructive behaviors;
- (x) reminding an individual with a mental illness to take his prescribed medications;
- (xi) calming an individual with post-traumatic stress disorder during an anxiety attack; or
- (xii) doing other specific work or performing other special tasks.

S.C. Code Ann. § 47-3-920(4)(a) (Supp. 2023) (emphasis added). These definitions make clear that a guide dog or service animal-in-training is in the process of learning skills it will use to assist a blind or disabled person. While section 43-33-20 refers to "guide and assistance dogs," as we concluded in a 2015 opinion, an assistance dog is equivalent to a "service animal" as defined in section 47-3-920. Op. Att'y Gen., 2015 WL 731710 (S.C.A.G. Feb. 9, 2015). As such, these definitions further support our belief that in order for a trainer to have the same rights as a disabled person under section 43-33-20, they must be training the guide or assistance dog to "do work or perform tasks" for the disabled person like those listed in section 47-3-920(4)(a) rather than general obedience and house training.

2. Are colleges and universities “places of public accommodations” that must grant access to persons training service animals? If so, does that obligation to grant access apply to our entire campus?

The right of disabled persons and trainers to be accompanied by an assistance or guide dog is limited under section 43-33-20 to the places listed in section 43-33-20(b), which include:

common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats or any other public conveyances or modes of transportation, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons

S.C. Code Ann. § 43-33-20(b). Colleges and universities are not specifically listed and therefore, you inquire as to whether they are considered “places of public accommodation” for purposes of this statute.

In our 2015 opinion referenced above, we discussed what is considered a “place of public accommodation” under section 43-33-20(b). Op. Att’y Gen., 2015 WL 731710 (S.C.A.G. Feb. 9, 2015). We noted the Legislature did not provide a definition of “places of public accommodation” for section 43-33-20(b), but we found similar language in the Public Accommodations Act found in chapter 9 of title 45 of the South Carolina Code. Id.

The Public Accommodations Act, S.C. Code Ann. § 45-9-10 et seq., has language very similar to section 43-33-20 and it states:

(A) All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in Article 1 of this chapter, without discrimination or segregation on the ground of race, color, religion, or national origin.

(B) Each of the following establishments which serves the public is a place of public accommodation within the meaning of this chapter if discrimination or segregation by it is supported by state action:

(1) any inn, hotel, motel, or other establishment which provides lodging to transient guests, other than an establishment located within a building which contains not more than five rooms for rent or hire and which is actually occupied by the proprietor of such establishment as his residence;

(2) any restaurant cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment, or any gasoline station...

(C) “Supported by state action” means the licensing or permitting of any establishment or any agent of an establishment listed above, subject to the exclusion provided in Section 45-9-20, which has or must have a license or permit from the State, its agencies, or local governmental entities to lawfully operate.

S.C. Code Ann. § 45-9-10 (1976 Code, as amended) (emphasis added).

Although it pertains to race, color, religion, or national origin instead of handicap or disability, section 45-9-10 closely parallels section 43-33-20 because they both deal with the same subject matter, discrimination against a certain type of person in public places. The Legislature chose to define ““place of public accommodation” in sections 45-9-10(b) and (c) and not in section 43-33-20. In view of the obvious close parallel between the two statutes, however, we believe that both of the statutes are governed by the same definition of “place of public accommodation.”

Id.

In further support of our 2015 opinion, the 2019 amendments to Layla’s Law added the following definition of “places of public accommodation”: “(7) ‘Places of public accommodation’ means airports, train stations, bus stations, and establishments defined in Section 45-9-10.” This addition solidifies our belief that the Legislature intended for the definition of “place of public accommodation” contained in section 45-9-10(B) be used for purposes of the disability statutes in general and specifically in regard to guide dogs and services animals.

Colleges and universities are not referenced as places of public accommodation under section 45-9-10(B). While colleges and universities may house some facilities falling under this definition of “places of public accommodation,” such as restaurants and retail establishments, we do not believe this definition encompasses colleges and universities as a whole. Therefore, a court is unlikely to find that colleges and universities as a whole are “places of public accommodation” for purposes of the Public Accommodations Act. In turn, we believe it is unlikely a court would find colleges

and universities are places of public accommodation for purpose of section 43-33-20, but caution that certain areas of a college or university could fall under this definition.¹

3. Can Clemson University require trainers to verify that dogs are “assistance or guide dogs in training” or “service animals in training” before allowing them to into classrooms, offices and other areas on campus that are not open to the public? Similarly, can the university enforce other regulations such as an age limit, verification of obedience training, and registration for the service animal in training?

Chapter 33 of title 43, governing the rights of physically disabled persons, does not speak a facility’s ability to inquire as to a dog’s status as an “assistance or guide dog.” Moreover, it does not provide such guidance regarding a dog in training to serve as an assistance or guide dog. The law simply requires that assistance or guide dog trainers be allowed access to public facilities and accommodations while engaged in training. S.C. Code Ann. § 43-33-20(d). Similar to our analysis above, we look to the provisions contained in Layla’s Law in order to obtain further guidance as to the legal parameters surrounding assistance and guide dogs in training, or as that law refers to them, service animals-in-training.

In 2019, our Legislature recognized state and federal law do not require documentation or a vest or other marking indicating an animal is a service animal, which may lead to abuse of the protections afforded to service animals. As such, the Legislature amended Layla’s Law to prevent people from misrepresenting an animal as a service animal. In preamble to the amendments to Layla’s Law, the Legislature stated:

Whereas, service animals that are properly trained to assist persons with disabilities play a vital role in establishing independence for such persons; and

Whereas, the term “service animal” has a distinct meaning in the law. A service animal means an animal that is trained for the purposes of assisting or accommodating the sensory, mental, or physical disability of a disabled person. Under the law, the provision of emotional support, well-being, comfort, or companionship does not constitute the work or tasks of a service animal; and

Whereas, no vest, other marking, or documentation is required for an animal to qualify as a service animal, nor are such vests, markings, or documentation a reliable indication of whether an animal is, by law, a service animal. People sometimes erroneously think that a therapy animal, an emotional support animal, or any animal wearing a vest or having any other type of marking is a service animal as defined by law; and

¹ This opinion is limited in scope to South Carolina Law. We do not opine as to whether colleges and universities are considered places of public accommodation under federal law. See *Op. Att’y Gen.*, 2022 WL 20471449 (S.C.A.G. June 28, 2022) (stating “it is the general policy of this Office not to opine on issues involving federal law.”).

Whereas, there is an increasing number of occurrences in which people exploit the confusion related to service animals and attempt to bring an animal into a place that it would otherwise not be allowed to enter by passing off the pet, therapy animal, or emotional support animal as a service animal, either by oral misrepresentation, placement of a vest or other marking on the animal, or presentation of a "certificate", despite knowing that it is not a service animal; and

Whereas, some companies mislead individuals into believing that they will be entitled to the rights or privileges for individuals with disabilities with service animals if they buy the company's vests or obtain some type of certificate. These misrepresentations, in some cases, are unlawful deceptive trade practices and compound the confusion around service animals; and

Whereas, commendably, federal and state laws require places of public accommodation, including airports, restaurants, theaters, stores, hospitals, and more, to allow any animal that is presented as a service animal into the place of public accommodation. These same places of public accommodation face a dilemma if someone enters the premises and intentionally misrepresents his animal as a service animal; and

Whereas, when people try to falsely represent a nonservice animal as a service animal, business owners and other places of public accommodation become increasingly distrustful that the animals being represented to them as service animals are, in fact, service animals. Misrepresentation of service animals delegitimizes the program and makes it harder for persons with disabilities to gain unquestioned acceptance of their legitimate, properly trained, and essential service animals.

2019 S.C. Acts 44. Accordingly, the Legislature enacted section 47-3-980 of the South Carolina Code (Supp. 2023) making it unlawful to misrepresent an animal as a service animal. Subsection (C) of this provision states: "Inquiries made in order to investigate and enforce the provisions of this section are limited to those inquiries allowed by the Department of Justice pursuant to 28 C.F.R. Section 36.302." S.C. Ann. § 47-3-980(C). The federal regulation referred to in section 47-3-980(c) prohibits inquiry into "the nature or extent of a person's disability . . ." 28 C.F.R. Section 36.302. But this regulation allows public accommodations to make two inquiries to determine whether an animal qualifies as a service animal. 28 C.F.R. § 36.302. "A public accommodation may ask if the animal is required because of a disability and what work or task the animal has been trained to perform." *Id.* However, this regulation does not address inquiries for service animals-in-training as service animals-in-training are not currently addressed under federal law. Additionally, applying these inquiries to a service animal-in-training would not make sense as these animals are neither required because of a disability nor are they performing tasks for their trainers.

The preamble to the 2019 amendments to Layla's Law clearly shows the Legislature's intent to prevent people from passing off pets as service animals. See *Watson v. Sellers*, 299 S.C. 426, 436, 385 S.E.2d 369, 374 (Ct. App. 1989) (determining the preamble of an act can provide evidence of legislative intent). As such, we believe the Legislature intended to allow public facilities and accommodations, which are mandated under section 43-33-20(d) to allow access to trainers of assistance and guide dogs, to make inquiries to determine their right to access. Therefore, we presume at a minimum these facilities may ask questions pertaining to the animal's status as an assistance or guide dog-in-training. Moreover, we find no limitations on the scope of any additional inquiries regarding assistance or guide dogs-in-training.

As to whether Clemson may impose other regulations such as age limits, verification or training, and registration is unclear. We appreciate Clemson's need to control what animals may be considered service animals-in-training to prevent unauthorized access. However, in our review of both section 43-33-20 and Layla's Law, we did not find authority to impose particular requirements on service animals-in-training. As noted above, federal regulations prohibit a public accommodation from requiring documentation, "such as proof that the animal has been certified, trained, or licensed as a service animal." 28 C.F.R. § 36.302. Nonetheless, because service animals-in-training are not protected under federal law, we believe the Legislature can and should clarify this issue.

Conclusion

Based on our analysis above, we are of the opinion that in order for a trainer of an assistance or guide dog to receive the same protections afforded to disabled persons regarding the right to use public facilities, they must be training the dog to perform tasks for blind or disabled persons. Therefore, we do not believe general obedience or house training qualify as the type of training by which such protections can be afforded to a trainer under South Carolina Law. We also do not believe colleges and universities as a whole are considered "places of public accommodation" under South Carolina Law. However, some facilities contained on college or university campuses may be considered places of public accommodation, therefore entitling blind and physically disabled persons, as well as trainers of assistance or guide dogs, to access.

You also ask about whether Clemson may require trainers to verify that dogs are assistance or guide dogs in training and what regulations it may impose on access given to service animals-in-training. Companion legislation affording protections to guide dogs and services animals prevents misrepresenting an animal as a service animal and permits inquiries allowed under federal law to make this determination. However, because service animals-in-training are not protected under federal law, we do not believe a facility is limited to these inquiries. As such, we presume a facility may make such inquiries it deems necessary in order to determine whether an animal is in fact a service animal-in-training. However, the Legislature did not give authority to facilities to add

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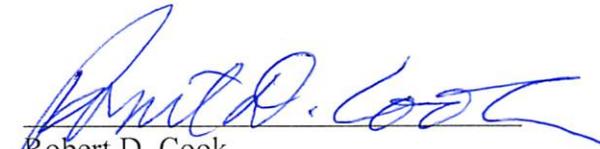
additional requirements for service animal-in-training. Therefore, we believe legislative clarification is needed to allow for these requirements.

Sincerely,

A handwritten signature in blue ink, appearing to read "Cydney Milling".

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook".

Robert D. Cook
Solicitor General