



HENRY McMASTER
ATTORNEY GENERAL

March 4, 2009

Marcia S. Adams, Director
South Carolina Department of Motor Vehicles
Post Office Box 1498
Blythewood, South Carolina 29016

Dear Ms. Adams:

We received your letter requesting that we re-evaluate or reconsider an opinion issued to Lieutenant Governor Andre Bauer on January 23, 2009.

Law/Analysis

As you stated in your letter, on January 23, 2009, this Office issued an opinion addressing whether the South Carolina Department of Motor Vehicles ("SCDMV") may exempt technical colleges from regulations generally applicable to driver training schools. Op. S.C. Atty. Gen., January 23, 2009. In that opinion, we found section 90-101 of the South Carolina Code of Regulations, promulgated by the SCDMV, specifies the requirements for the licensure of truck driver training schools. Id. This regulation provides:

The Department shall not issue a license for a truck driver training school to any individual, partnership, group, association, or corporation, except as exempted by Section 56-23-20 of the South Carolina Code of Laws unless:

(1) The individual, partnership, group, association, or corporation, has at least one (1) commercial motor vehicle registered or leased in the name of the truck driver training school, and the motor vehicle(s) is/are inspected by a Departmental representative and for which the Department has received a certificate of insurance; and

(2) The individual, partnership, group, association, or corporation has at least one (1) person licensed by the Department as a truck driver training instructor for that truck driver training school.

S.C. Code. Ann. Reg. 90-101 (Supp. 2008).

Interpreting this regulation, our opinion concluded that “the SCDMV cannot issue a license unless the licensee both has a commercial motor vehicle registered or leased in the licensee’s name and the licensee employs at least one person who qualifies as a licensed instructor.” Op. S.C. Atty. Gen., January 23, 2009. The situation described in the materials sent by Lieutenant Governor Bauer involved technical colleges subcontracting the operation of their truck driver training programs to existing driving training schools. We understood that when both the technical college and the subcontractor are charging a fee, the SCDMV requires both to be licensed. Thus, we opined that both must individually satisfy the requirements of section 90-101. Id.

This Office recognizes a long-standing rule that we will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Op. S.C. Atty. Gen., September 29, 2006. Finding no change in the authority cited in our previous opinion, we will only overrule this opinion if we find it to be clearly erroneous.

In your letter, you stated that our previous opinion was in error for three reasons. First, you argue that “the obvious purpose of the statute is to ensure that the licensed training school has the capacity to do the training required.” Therefore, you assert that the SCDMV cannot “deny licensure to associations of technical colleges and existing licensees who chose to conduct their business by contractual arrangements regarding leases, sub-leases or the exchange of employees on a full or part-time basis.” Second, you argue that allowing technical colleges and established driver training schools to enter into joint ventures is “a positive” in that it furthers the SCDMV’s goals to assure students that their investment in a school is protected and the SCDMV is not seeking to exclude other driver training schools. You stated: “Through alliances with technical colleges, students would be served in areas outside of the geographic areas convenient to existing licensees, and thereby would increase employment once the training was successfully completed.” Lastly, you assert that “the primary purposes of the statutory and regulatory scheme have been to serve the safety interest of the general public and to protect the students from fraudulent or incompetent business practices.”

While we do not dispute your assertion of the policy behind the statutes and regulations governing truck driver training schools, we cannot ignore the plain language contained in the regulation. The regulation clearly requires certain criteria to be met in order for a truck driver training school to obtain a license. Thus, despite the positive impact that allowing technical colleges to engage in the business of educating students to drive trucks would have on the students and the

community, we cannot read an exception into the regulation that has not been provided for. Accordingly, we do not believe our prior opinion is clearly erroneous and we take the position that it remains valid.

Nonetheless, you ask, if our opinion stands, how the SCDMV would deny a license if the technical college entered into a joint venture or an association with an existing licensee if the licensee leased its vehicles and shared its employees with the technical college. Pursuant to section 90-101(1), a vehicle leased to, rather than owned by, the proposed licensee is sufficient for satisfying the vehicle requirement. Moreover, we agree with your assessment that the statutes and regulations do not prohibit the sharing of employees between two proposed licensees. Thus, if the technical college employs at least one person licensed as a truck driver training instructor, regardless of whether that person may be employed elsewhere, we believe that the technical college would satisfy the instructor requirement in section 90-101(2). Therefore, in our opinion a technical college leasing a vehicle from an existing licensee and sharing an instructor with an existing licensee could satisfy the requirements of section 90-101.

In addition, we also point out that our findings in the prior opinion are based upon the SCDMV's position that both the technical college and the driver training school must each obtain a license. However, if the SCDMV recognizes the joint venture or other legal arrangement formed between the technical college and the driver training school as a "partnership, group, association, or corporation" under section 90-101 and thus, requires only one license for the partnership, group, association, or corporation, only the partnership, group, association or corporation, not the individual technical college and driver training school, would be required to satisfy the requirements in section 90-101. Accordingly, the technical college could benefit from the driver training school's ability to satisfy the requirements under section 90-101.

Conclusion

We appreciate your letter asking us to reconsider our findings in our January 23, 2009 opinion issued to Lieutenant Governor Andre Bauer. We understand your arguments as to the public policy supporting the statutes and regulations governing truck driver training schools. Nonetheless, we cannot ignore the plain language in section 90-101, setting forth specific requirements for licensure as a truck driver training schools, to exempt technical colleges from these requirements.

However, we agree that if a technical college leases a vehicle from a currently licensed school and employs an instructor who is also employed by another school, the technical college could satisfy the requirements set forth under section 90-101. Furthermore, if the SCDMV recognizes a legal relationship between a technical college and an existing driver training school as a partnership,

Ms. Adams
Page 4
March 4, 2009

group, association, or corporation pursuant to section 90-101, we are of the opinion that only the legal entity created must satisfy the requirements in section 90-101 in order to be licensed.

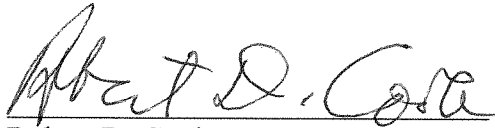
Very truly yours,

Henry McMaster
Attorney General

A handwritten signature in cursive script, appearing to read "Cydney M. Milling".

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in cursive script, appearing to read "Robert D. Cook".

Robert D. Cook
Deputy Attorney General