HENRY MCMASTER
ATTORNEY GENERAL

September 13, 2010

Thomas W. Holland, Sr., Esquire
Staff Attorney
Lancaster County Sheriff's Office
PO Box 908
Lancaster, SC 29721

Dear Mr. Holland:

We received your letter requesting an opinion of this Office concerning public school buses on private roads. As a way of background, you explained that "homeowners of a private road have complained about a Lancaster County School District bus that traverses their road as a part of its bus route. [Four homeowners] signed a letter expressing their desire [to] stop the school district's use of their private road." You asked "if, as we believe, the owner's of the private road can exclude public school buses, what charges if any can be made. In addition, who would be the appropriate party(ies) to charge."

This opinion will address prior opinions of this Office, relevant statutes and caselaw to answer the questions posed above.

Law/Analysis

S.C. Code § 56-5-810 states as follows:

> **Nothing in this chapter shall be construed to prevent the owner of real property** used by the public for purposes of vehicular travel by permission of the owner and not as matter of right **from prohibiting such use**, from requiring other or different or additional conditions than those specified in this chapter **or from** otherwise **regulating such use as may seem best to such owner**.

S.C. Code § 56-5-810 (emphasis added).

In interpreting any legislative act, the primary objective is to ascertain and effectuate legislative intent if at all possible. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 476 S.E.2d 690 (1996). "If a statute's language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another

meaning. The words must be given their plain and ordinary meaning without resort to subtle or forced construction which limit or expand the statute's operation." Strickland v. Strickland, 372 S.C. 76, 88-89, 650 S.E.2d 465, 472 (2007) (citations omitted).

The language in S.C. Code § 56-5-810 is clear that owners can regulate or prohibit public use of their private road. Anyone who enters private property without permission could logically be charged with trespassing.

This Office is not a fact-finding entity; "investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court." Ops. S.C. Atty. Gen., September 14, 2006; April 6, 2006. However, based on conversations with Lancaster County government officials, it is the understanding of this Office that the four homeowners who wrote Sheriff Faile requesting the school bus to stop using the private road do not own the private road. They simply share an easement across Harriette Lane with others on that street. The school bus used the road to pick-up and drop-off a handicapped student whose family also lives on Harriette Lane.

It is the opinion of this Office that a court would likely find that one who only has an easement right across a road is not considered an owner. See, Frierson v. Watson, 371 S.C. 60, 65, 636 S.E.2d 872, 874 (2006) ("Goodwill Industries of Upper South Carolina, Inc. is the fee simple owner of said property subject, however, to the following exceptions . . . Easement as to Tract No. 2. . . . and such easements or rights-of-way to the exterior door, stairwell and hallway as [shown] on a plat dated April 23, 2002."); King v. Hawkins, 282 S.C. 508, 510, 319 S.E.2d 361, 362 (1984) (The court affirmed that the "King was the fee simple owner of the land but . . . that Hawkins had acquired an easement for certain septic tank drain lines intruding a short distance into the subject tract"). If the four homeowners simply have an easement, they would not be considered owners for the purposes of S.C. Code § 56-5-810. Therefore, so long as the activity taking place is within the reasonable scope of the easement, such use would be permissable.

"The rights of the land owner and easement owner are not absolute, irrelative and uncontrolled, but are limited by each other so that there may be reasonable enjoyment by both. Clemson Univ. v. First Provident Corp., 260 S. C. 640, 197 S. E. 2d 914 (1973), later appeal sub nom., Douglas v. First Provident Corp. of South Carolina, 263 S. C. 199, 209 S. E. 2d 49 (1974). The easement owner is limited to a use that is reasonable, necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated. Hill v. Carolina Power & Light Co., 204 S. C. 83, 28 S. E. 2d 545 (1944)." 12 S.C. Jur. Easements § 20.

It is the understanding of this Office that the easement on Harriette Lane was to be used for ingress and egress. A school bus traveling the road twice a day on school days would likely be considered reasonable use within the scope of the easement.

In an opinion of this Office dated April 27, 2010 we stated as follows:

> Generally, the owner in fee simple has all of the rights and responsibilities of maintaining property. However, when an easement is created, a small portion of the rights are given away by the grantor to the grantee. **An easement is the "right to use the land of another for a specific purpose."** Steele v. Williams, 204 S.C. 124, 28 S.E.2d 644 (1944). The grantor or fee simple owner would be considered servient, and the grantee or easement owner would be considered dominant. South Carolina Jurisprudence explains the duties of each as follows:
>
> > In the absence of an agreement, the owner of the servient tenement is under no duty to maintain and repair and easement for the benefit of the dominant tenement. **Ordinarily, the owner of the dominant tenement has the duty to keep the easement in repair.** When both the owner of the dominant tenement and the owner of the servient tenement use the property subject to the easement, such as a gravel road, a court may equitably divide the responsibility for maintenance and repair, and may take into account such factors as the dominant tenement's duty of maintenance and repair, the burden of the easement on the servient tenement, and the extent of the servient tenement's use. 12 S.C. Jur. Easements § 25.

Op. S.C. Atty. Gen., April 27, 2010 (emphasis added).

The four homeowners indicated in the letter to Sheriff Faile that they "are not willing to accept the potential liability, should an accident arise out of the condition of the roadway, due to the damage caused by the Lancaser County School district and will be seeking reparations for the damage, caused by the County School District vehicles." However, as explained above, "the owner of the dominant tenement has the duty to keep the easement in repair." Op. S.C. Atty. Gen., April 27, 2010 (quoting 12 S.C. Jur. Easements § 25). See also, Hayes v. Tompkins, 287 S. C. 289, 337 S. E. 2d 888 (1985). Therefore, a court would likely find that the repairs would be equitably divided among the dominant tenements, those benefitting from the easement. Hayes, 287 S. C. 289 (1985).

Not only do the homeowners with easement rights not have authority under S.C. Code § 56-5-810 to regulate or prohibit use of the private road by public entities, but the State Department of Education is charged with the responsibility to transport handicapped students under S.C. Code § 59-67-520. S.C. Code § 59-67-520 states as follows:

> Notwithstanding the provisions of §§ 59-33-50, 59-67-420 and 59-67-510, the State Department of Education shall have the responsibility for transporting handicapped persons of lawful school age to and from the nearest school in which a handicapped pupil has been duly assigned. Additionally, when a school district is providing classes for handicapped persons between the ages of five and twenty-one years at the same location where classes and programs are provided for handicapped persons under age five and over age twenty-one, and when a cost reduction will result, the Department may enter into a reciprocal agreement with the facility whereby certain handicapped persons between the ages of five and twenty-one years may be transported on buses not owned by the Department and certain handicapped

persons under age five and over age twenty-one may be transported on Department owned buses.

S.C. Code § 59-67-520.

Conclusion

Under S.C. Code § 56-5-810 the owner of a private road may restrict or prohibit public use of his or her road. However, it is the opinion of this Office that one who shares an easement right with others would not be considered an "owner." Each individual with rights to the easement is permitted to use the road within the reasonable scope of the easement. 12 S.C. Jur. Easements § 20; Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.E.2d 545 (1944). It is the opinion of this Office that a court would likely find that a school bus traveling twice a day on school days on a private road to pick-up or drop-off a handicapped student would be considered a reasonable use of the easement. Additionally, under state and federal law, school districts must provide transportation to handicapped students.

The Lancaster County School District was invited by an individual with rights to the easement on Harriette Lane to use the easement for ingress and egress to pick up a handicapped student who lives on Harriette Lane. It requires no citation of authority to recognize that the four other easement holders have rights to use the easement within its reasonable scope, but cannot prevent the fifth easement holder from exercising his rights.

Responsibility for repairing the road generally falls on the dominent tenement. A court would likely find that each of the five easement holders are jointly responsible for maintaining the private road. See, Op. S.C. Atty. Gen., April 27, 2010.

Sincerely,

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REVIEWED AND APPROVED BY:

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