



HENRY McMASTER
ATTORNEY GENERAL

April 8, 2010

The Honorable Shane Martin
South Carolina Senate, District 13
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Martin:

We received your letter requesting an opinion of this Office concerning Jacob's Law. You asked this Office "to define Jacob's law pertaining to transporting ten or less children in personal vehicles, versus Federally approved School Buses." Several prior opinions of this Office have addressed the scope of Jacob's law. This opinion will address those prior opinions, relevant statutes, and legislative history.

Law/Analysis

As we noted in prior opinions of this Office, the Legislature enacted S.C. Code § 56-5-195 in 2000 via Act No. 301 in reaction to a fatal accident involving a 15-passenger van and a tanker truck. Op. S.C. Atty. Gen., October 10, 2008; March 7, 2008; September 21, 2006; June 10, 2005; November 30, 2001; February 21, 2001. Jacob Strebler, a six-year-old boy, was killed while riding in the van operated by Heathwood Hall Episcopal School. Id. The van did not meet the federal safety standards for school buses. Id. Thus, the legislature enacted the statute below known as "Jacob's Law." Id. The statutes provide as follows:

- (A) Effective July 1, 2000, **any entity transporting preprimary, primary, or secondary school students to or from school, school-related activities, or child care, and utilizing a vehicle defined as a "school bus" under 49 U.S.C. Section 30125, as defined on April 5, 2000, must transport these students in a vehicle meeting federal school bus safety standards, as contained in 49 U.S.C. Section 30101, et seq., or any successor statutes, and all applicable federal regulations. Nothing in this section prohibits the transportation of children to or from child care in nonconforming vehicles by a State of South Carolina human service provider or public transportation authority as long as each child is accompanied by a parent or**

- legal guardian whose transportation is in connection with his work, education, or training.
- (B) Notwithstanding subsection (A) of this section, any vehicle that is purchased before July 1, 2000, and is utilized to transport preprimary, primary, or secondary students to or from school, school-related activities, or child care is not subject to the requirements contained in subsection (A) of this section until July 1, 2006. A vehicle that is purchased on or after July 1, 2000, and is utilized to transport preprimary, primary, or secondary students to or from school, school-related activities, or child care is subject to the requirements contained in subsection (A) of this section once the vehicle is utilized for those purposes.
 - (C) Before July 1, 2006, nothing in this section may be construed to create a duty or other obligation to cease utilizing nonconforming vehicles purchased before the effective date of this act.
 - (D) To facilitate compliance with the provisions contained in this section, any entity contained in this section may purchase conforming vehicles under the State of South Carolina contracts for purchase of these vehicles.
 - (E) Nothing in the section prohibits the transportation of students by common carriers that are not exclusively engaged in the transportation of school students or by the entities subject to this section which own or operate these vehicles. However, the motor carriage used by the common carrier or entity to transport students must be designed to carry thirty or more passengers.

This Office has addressed the scope of Jacob's Law in relation to church vans, city recreation department's 15-passenger vans, charter buses owned by the school district, charter buses owned by the Band Booster Club, and transportation provided to children by the South Carolina Department of Health and Human Services. Most opinions found that legislative or judicial clarification was needed to fully answer the questions posed¹ or that the statute did not apply unless the vehicles were going to or from school, a school related event, or child care². Although legislative or judicial clarification was requested in the October 10, 2008 opinion, this Office found that legislative intent indicates that "the exception for 'entities subject to this section which own or operate vehicles' would be applicable to the owners or operators of the former charter buses purchased by the [school's] band." Op. S.C. Atty. Gen., October 10, 2008 (quoting S.C. Code § 56-5-195(E)).

In early 2009, the Legislature introduced a bill to amend S.C. Code § 56-5-195 "relating to bus safety standards, so as to provide that former charter buses are exempt from the required standards when

¹ Op. S.C. Atty. Gen., October 10, 2008; November 30, 2001; February 21, 2001.

² Op. S.C. Atty. Gen., September 21, 2006; June 10, 2005

owned and operated by a school district.”³ The bill was referred to committee in both the House and the Senate. This proposed legislation has not been voted on or codified. However, if this bill passes, then subsection (F) will be added, providing an exemption for charter buses that have previously been purchased.

In the February 21, 2001 opinion of this Office, it was specifically questioned whether the statute was applicable to vans used by the City of Aiken’s Recreation Department. This office concluded that:

Given the circumstances which led to the passage of Act 301, it is clear that the Act is remedial in nature. Moreover, it is clear that the general intent of the Legislature is to better provide for the health and welfare of our State’s children. As it is remedial and as it relates to the safety of our children, it must be construed in a liberal manner to effectuate the general intent of the Legislature.

A liberal reading of the statute would give rise to an expanded application of the terms of the Act. Accordingly, it could be possible for the prescriptions of § 56-5-195 to apply to municipalities, such as the City of Aiken, when they undertake to transport children in 15-person vans in certain situations.

The opinion noted, however, that it appears that the statute as originally drafted . . . was “to apply only to public and private schools in the transportation of students.” Op. S.C. Atty. Gen., February 21, 2001.

The October 10, 2008 opinion of this Office further explains that in past opinions other factors have been considered, indicating that § 56-5-195 could be construed more narrowly, such as when read in conjunction with § 56-5-196.⁴ When § 56-5-196 is read along with § 56-5-195, activities such as the ones engaged in by the City of Aiken are excluded from the restrictions of Jacob’s Law because § 56-5-195 only governs entities transporting students to or from school, school-related activities, or child care facilities designated pursuant to § 56-5-196.⁵

³ H. 3626; S. 318 (Session 118, 2009-2010)

⁴ “The parents or legal guardians of a student who is eligible to receive public school bus transportation must have the option of designating a child daycare center or other before or after school program as the student’s origin or destination for school transportation.” S.C. Code § 56-5-196.

⁵ See, Op. S.C. Atty. Gen., October 10, 2008 (citing Op. S.C. Atty. Gen., February 21, 2001).

This Office has now been asked to particularly review whether ten or less children may be transported in personal vehicles. S.C. Code § 56-5-195 explains that “any entity transporting preprimary, primary, or secondary school students to or from school, school-related activities, or child care, **and** utilizing a vehicle defined as a ‘school bus’ under 49 U.S.C. Section 30125 . . . must transport these students in a vehicle meeting federal school bus safety standards.” The code section uses the word “and,” indicating that to be bound by Jacob’s Law and the federal standards included there within,⁶ all of the following must apply: a) one must be transporting school children, b) to or from school, a school-related activity or child care, **and**, c) must be using a school bus, as defined by 49 U.S.C. § 30125. “School bus” is defined as “a passenger motor vehicle designed to carry a driver and more than 10 passengers, that the Secretary of Transportation decides is likely to be used significantly to transport preprimary, primary, and secondary school students to or from school or an event related to school.” 49 U.S.C. § 30125.

A personal vehicle generally would not fall under the definition of “school bus,” as defined by 49 U.S.C. § 30125. You indicated that ten or less children would be transported, and you gave no indication that the children would be transported to or from school or a related school event or child care.

Since the three-prongs mentioned above are not satisfied, there is no need to look for an exception. However, in an abundance of caution, this opinion will address § 56-5-195(E) which indicates that “transportation of students by common carriers that are not exclusively engaged in the transportation of school students” are not prohibited by this section. The subsection goes on to say that “the motor carriage used by the common carrier . . . must be designed to carry thirty or more passengers.” In the March 7, 2008 opinion, this Office indicated that “such provision only applies to common carriers, such as charter bus companies, that are on occasion used to transport school students and that are not ‘exclusively engaged’ in such activity.” While judicial or legislative clarification would be helpful, it does not appear that this subsection would apply to personal vehicles.

Conclusion

The statute’s ambiguities give rise to the need for legislative or judicial clarification; however, it is the opinion of this Office that Jacob’s law would permit ten or less children to be transported in a personal vehicle, even though the vehicle does not meet federally approved school bus standards.

⁶ 49 U.S.C. § 30101

The Honorable Shane Martin

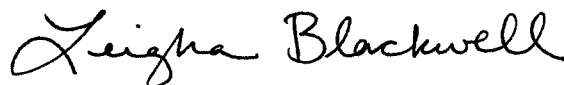
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Personal vehicles generally do not fall under the definition of "school bus," and there is no indication that children are being transported to or from school, a school-related activity, or child care.⁷ Therefore, § 56-5-195 does not govern the use of personal vehicles when ten or less children are being transported.

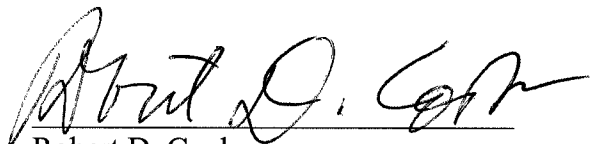
Sincerely,

Henry McMaster
Attorney General



By: Leigha Blackwell
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

⁷ As mentioned, these facts do not indicate that children are being transported to or from school, a school-related event, or child care. However, even if the children were being transported to or from such a place, S.C. Code § 56-5-195 would not apply where ten or less children being transported in a personal vehicle.