HENRY MCMASTER
ATTORNEY GENERAL

October 7, 2010

The Honorable Shane Martin
Senator, District No. 13
P. O. Box 575
Pauline, South Carolina 29374

Dear Senator Martin:

In a letter to this office you questioned whether school administrators in a particular situation could be charged with child endangerment. You particularly questioned whether school administrators could be charged with such offense if they allow children, described as being between 4 and 13 years of age, to be picked up at school and transported to a private facility

> ...that they know is operating without meeting safety, fire, etc. standards. Also the facility has no occupancy permit (could not meet regulations). The parents signed release forms, but administrators were aware the facility did not meet safety requirements.

You also particularly questioned whether the school administrators are "...required to notify authorities to protect the children in the facility that is owned by the assistant principal?"

As to the offense of child endangerment, S.C. Code Ann. § 63-5-70 states that

> (A) [i]t is unlawful for a person who has charge or custody of a child, or who is the parent or guardian of a child, or <u>who is responsible for the welfare of a child as defined in Section 63-7-20</u> to:
>
> > (1) <u>place the child at unreasonable risk of harm affecting the child's life, physical or mental health, or safety;</u>
> > (2) do or cause to be done unlawfully or maliciously any bodily harm to the child so that the life or health of the child is endangered or likely to be endangered; or

(3) wilfully abandon the child.

(B) A person who violates subsection (A) is guilty of a felony and for each offense, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. (emphasis added).

S.C. Code Ann. § 63-7-20(16) states that a "person responsible for a child's welfare"

...includes the child's parent, guardian, foster parent, an operator, employee, or caregiver, as defined by Section 63-13-20, of a public or private residential home, institution, agency, or childcare facility or an adult who has assumed the role or responsibility of a parent or guardian for the child, but who does not necessarily have legal custody of the child. A person whose only role is as a caregiver and whose contact is only incidental with a child, such as a babysitter or a person who has only incidental contact but may not be a caretaker, has not assumed the role or responsibility of a parent or guardian.... (emphasis added).

Section 63-13-20(1) defines a "caregiver" as "...any person whose duties include direct care, supervision, and guidance of children in a childcare facility."

In the opinion of this office, depending upon the circumstances, a school administrator, such as a school principle, who owns the private facility, could constitute "...an operator...of a public or private...institution, agency, or childcare facility" so as to be considered "a person responsible for a child's welfare" for purposes of Section 63-5-70. However, as stated in an opinion of this office dated July 8, 2010, "investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court." See also Op. S.C. Atty. Gen. dated September14, 2006. I assume that the school administrator does not actually work at the facility so as to be included within the category of an "employee" or "caregiver" as defined above. Therefore, depending upon the facts, the circumstances outlined in your letter could conceivably constitute "child endangerment." Other administrators who do not own the facility would not appear to be included for purposes of Section 63-5-70.

Moreover, another provision, S.C. Code Ann. § 63-7-310 should be considered. That provision, as amended by Act No. 227 of 2010, states that

(A) [a] physician, nurse, dentist, optometrist, medical examiner, or coroner, or an employee of a county medical examiner's or coroner's office, or any other medical, emergency medical services, mental health, or allied health professional, member of the clergy including a Christian Science Practitioner or religious healer, school teacher, counselor, principal, assistant principal, school attendance officer, social or

> public assistance worker, substance abuse treatment staff, or childcare worker in a childcare center or foster care facility, foster parent, police or law enforcement officer, juvenile justice worker, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, judge, or a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.
>
> (B) If a person required to report pursuant to subsection (A) has received information in the person's professional capacity which gives the person reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by acts or omissions that would be child abuse or neglect if committed by a parent, guardian, or other person responsible for the child's welfare, but the reporter believes that the act or omission was committed by a person other than the parent, guardian, or other person responsible for the child's welfare, the reporter must make a report to the appropriate law enforcement agency. (emphasis added).

S.C. Code Ann. § 63-7-20(4) states that "[c]hild abuse or neglect" or "harm" occurs when the parent, guardian, or other person responsible for the child's welfare:

> (a) inflicts or allows to be inflicted upon the child physical or mental injury or engages in acts or omissions which present a substantial risk of physical or mental injury to the child, including injuries sustained as a result of excessive corporal punishment, but excluding corporal punishment or physical discipline which:
>
> > (i) is administered by a parent or person in loco parentis;
> > (ii) is perpetrated for the sole purpose of restraining or correcting the child;
> > (iii) is reasonable in manner and moderate in degree;
> > (iv) has not brought about permanent or lasting damage to the child;
> > and
> > (v) is not reckless or grossly negligent behavior by the parents.

Referencing the above, while this office makes no determination as to the factual situation prompting your request letter as to whether children in the private facility noted in your request letter which you contend is operating without meeting safety, fire, etc. standards are "abused or neglected" as provided in Sections 63-7-310 or 63-7-20(4), consideration should be given to reporting the information to the appropriate authorities as specified in Section 63-7-310 for further investigation

and review. At that point, a more definite review could be made of the situation addressed in your letter.

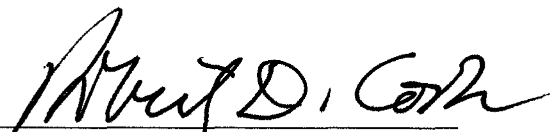
With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General