

1983 WL 182070 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 30, 1983

\*1 Jonnie D. Spaulding, Ed.D.  
Director of Student Development  
Wil Lou Gray Opportunity School  
W. Campus Road  
West Columbia, South Carolina 29169

Dear Dr. Spaulding:

You have requested the advice of this office as to whether dormitory counselors and other Opportunity School personnel who are not licensed to practice nursing or medicine may administer prescribed and over-the-counter medications and administer first aid. Your school is a residential facility.

This matter has been previously addressed by an opinion of this office as to public day school. 1980 Ops. Atty. Gen. #83, p. 133. This opinion concluded that, while they may administer care in emergencies, unlicensed school personnel may not treat sick or injured students under most circumstances. In reviewing this matter for you, we have located no additional authority which would alter this conclusion as to your school.

Although case law on the 'in loco parentis' doctrine as it applies to medical treatment in schools appears to be very limited, the nursing and medical practice statutes in this state indicate that the doctrine does not permit residential as well as day schools to avoid any prohibition in the statutes. The only exceptions in the nursing statute which could conceivably apply here are those for ' . . . gratuitous nursing by friends or members of the family . . . ' or ' . . . the medical care of the sick by domestic servants or persons primarily employed as housekeepers . . . ' § 40-33-50 of the Code of Laws of South Carolina (1976). These exceptions indicate that they apply only to private employees, personal friends and family members rather than to school personnel. The exclusion of any reference to a school setting from this list of exceptions indicates that it is not excepted. See Sutherland Statutory Construction, Vol. 2A § 47.11. Similarly, no applicable exception is evident in the medical practice laws. § 40-47-60 and Sutherland, supra.

The previous opinion cited above did not expressly address the question of whether school personnel employed primarily in teaching, counseling or in other non-medical positions are 'compensated' for executing medical or nursing duties so as to come within the nursing practice statutes even though they receive no extra pay. See §§ 40-33-10(f)&(g) of the Code of Laws of South Carolina (1976). See also § 40-47-40(a). The statutes give no express guidance on the issue; however, to the extent that the duties of school personnel include caring for the sick, the personnel might be said to be compensated for their time in executing those duties so as to fall within the statutes. See, supra. This conclusion is supported by the reasoning in Lee v. State, 490 P2d 1206 (Alaska, 1971), overruled on other grounds, 545 P2d 165, cited in the above opinion. In that case, the court focused on the duties of the individual in considering the application of a Good Samaritan statute which protected rescuers not expecting 'compensation.' Moreover, the medical practice law does not appear to be limited to services for which compensation is received. § 40-47-40(c).

\*2 For the above reasons, the 1980 opinion appears to be applicable to your school. Only properly licensed and supervised personnel should perform those health care functions regulated by the nursing and medical practice acts. I suggest that you contract appropriate nursing and medical authorities to determine what, if any, functions would not be regulated.

If we may be of other assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.  
Assistant Attorney General

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