



ALAN WILSON  
ATTORNEY GENERAL

August 16, 2021

The Honorable Dwight Loftis, Member, South Carolina Senate  
The Honorable J.M. "Mike" Burns, Bill Chumley, Mark Willis,  
Patrick B. Haddon, and Tommy Stringer, Members  
South Carolina House of Representatives  
P.O. Box 11867  
Columbia, SC 29211

Dear Senator Loftis and Representatives Burns, Chumley, Willis, Haddon, and Stringer:

Attorney General Alan Wilson has referred your letter to the Opinions section. The letter states the following:

We have learned that the South Carolina Department of Health and Environmental Control (SCDHEC) has issued Interim Guidelines (link included below) proposing testing and isolation of Palmetto State students who have contracted or been exposed to COVID-19. These guidelines appear to be unnecessarily complicated and disruptive to the learning that needs to be done in our state classrooms in order for our students to compete nationally and internationally.

Nevertheless, we are told that Greenville County Schools Administration has interpreted these interim SCDHEC guidelines to require any student who has not received COVID-19 virus vaccinations, who have been in close contact with any COVID-19 infected person for 15 minutes or longer, to be placed into quarantine or isolation for 10 days.

Incredibly, it appears these isolated students will be prohibited from attending school.

...

As a result of this situation and these seemingly draconian proposed measures, we ask:

1. Can DHEC issue interim -- or for that matter any -- guidelines of any type when there is no State declared health emergency, nor any Gubernatorial Emergency Executive Order in effect?

It also appears that Greenville County Schools Administration is claiming:

Regarding quarantines, SC Code under Section 44 contains the Emergency Health Powers Act, which grants DHEC the authority to set parameters for dealing with public health emergencies. This includes the determination of quarantines/isolations in order to help mitigate the spread of a disease. As a result, DHEC's directives around quarantining individuals with a known exposure to COVID-19 have the authority of law as opposed to guidelines or recommendations.

We are also informed that "Isolation" and "Quarantine" are defined in SC Code §44-4-130. Further, under §44-4-530 DHEC seems to be claiming that its agency has the power to isolate or quarantine individuals or groups who have been infected or exposed to a communicable disease.

2. In your opinion, does that power exist only during a declared "Public Health emergency?"

3. In your opinion, does S.C. Code §1-3-420 only grant emergency power to our Governor, by authorizing her or him to declare an emergency in the event of "a public health emergency, as defined in Section 44-4-130?"

4. Does **only** the Governor also have this power under S.C. Code § 25-1-440?

Your letter of July 8 to Andrew Hsu, College of Charleston President ... advised him that "...the decision to be vaccinated from COVID-19 is a personal decision. As a result, no state institution may mandate COVID-19 vaccinations or retaliate against those that choose not to receive a vaccination."

5. Given your prior opinion, and Part IB Provisos 1.108 and 117.163 in the 2021-22 Annual Appropriations Act, which prohibit public schools and school districts from mandating the wearing of face coverings or receiving vaccinations, as well as the punishing of anyone declining to receive vaccinations or wear a mask, how can the Greenville Schools Administration enforce the protocols and procedures they have promulgated?

**Law/Analysis**

This opinion has been expedited and will not undertake an exhaustive analysis of all applicable law. It should be read and understood in the context of the law cited and the current circumstances.

It is this Office’s understanding that the South Carolina Department of Health and Environmental Control (“DHEC” or the “Department”) issued its July 29, 2021 “Covid-19 Interim Guidance for K-12 Operations” pursuant to statutory authority contained in Chapter 1, Title 44 of the South Carolina Code of Laws. The General Assembly authorized DHEC to “make, adopt, promulgate and enforce reasonable rules and regulations from time to time requiring and providing:

...

(10) For the care, segregation and isolation of persons having or suspected of having any communicable, contagious or infectious disease;

...

(12) For the thorough investigation and study of the causes of all diseases, epidemic and otherwise, in this State, the means for the prevention of contagious disease and the publication and distribution of such information as may contribute to the preservation of the public health and the prevention of disease; and

...

The Department may make separate orders and rules to meet any emergency not provided for by general rules and regulations, for the purpose of suppressing nuisances dangerous to the public health and communicable, contagious and infectious diseases and other danger to the public life and health.

S.C. Code Ann. § 44-1-140; see also S.C. Code Ann. § 44-1-110 (“The Department of Health and Environmental Control is invested with all the rights and charged with all the duties pertaining to organizations of like character and is the sole advisor of the State in all questions involving the protection of the public health within its limits.”). This authority is separate from those derived from the Emergency Health Powers Act. S.C. Code §§ 44-4-100 *et seq.*

As described in your letter, the powers granted in the Emergency Health Powers Act can be exercised during a public health emergency. See e.g. S.C. Code § 44-4-530 (“During a public health emergency, DHEC may isolate or quarantine an individual or groups of individuals.”). The General Assembly granted the Governor the power to declare a state of public health emergency.

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See S.C. Code § 1-3-420 (“The Governor, ... shall, by proclamation, declare that, because ... a public health emergency, as defined in Section 44-4-130, a danger exists to the person or property of any citizen and that the peace and tranquility of the State ....”). This Office previously opined that “only the Governor [is] empowered to exercise extraordinary emergency powers under Section 25-1-440.” Op. S.C. Att’y Gen., 2020 WL 2044370, at 1 (March 29, 2020); see also S.C. Code § 25-1-440(a)(2) (“The Governor ... is empowered [to] ... (2) declare a state of emergency for all or part of the State if he finds a disaster or a public health emergency, as defined in Section 44-4-130 ...”). It remains this Office’s opinion that only the Governor, and his interim successors if he is unavailable, is authorized to issue such a declaration.

This Office was not provided protocols or procedures promulgated by the Greenville County School District related to COVID-19. As a result, this opinion can only comment on general authority related to school and childcare exclusions. DHEC is required to annually publish a “School and Childcare Exclusion List” which lists contagious or communicable diseases and the necessary documentation for a child to return to school or other childcare setting. See S.C. Code Regs. 61-20, § 12 (Official School and Childcare Exclusion List of Contagious or Communicable Diseases); see also SC DHEC *School and Childcare Exclusion List*, [https://scdhec.gov/sites/default/files/media/document/School-Childcare%20Exclusion%20List%202021\\_Final\\_6.10.2021.pdf](https://scdhec.gov/sites/default/files/media/document/School-Childcare%20Exclusion%20List%202021_Final_6.10.2021.pdf) (last visited August 10, 2021). If a school district’s protocols are in compliance with this publication, a court would likely find such protocols are consistent with the general law of this State.

#### **Conclusion**

It is this Office’s understanding that the South Carolina Department of Health and Environmental Control (“DHEC” or the “Department”) issued its July 29, 2021 “Covid-19 Interim Guidance for K-12 Operations” pursuant to statutory authority contained in Chapter 1, Title 44 of the South Carolina Code of Laws. This authority is separate from those derived from the Emergency Health Powers Act. S.C. Code §§ 44-4-100 *et seq.* The powers granted in the Emergency Health Powers Act can be exercised during a public health emergency. The General Assembly granted the Governor the power to declare a state of public health emergency. It is this Office’s opinion that only the Governor, and his interim successors if he is unavailable, is authorized to issue such a declaration.

Sincerely,



Matthew Houck  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook  
Solicitor General