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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

June 10, 2005

The Honorable Michael A. Pitts
Member, House of Representatives
372 Bucks Point Road
Laurens, South Carolina 29360

Dear Representative Pitts:

By letter, you request an opinion as to the applicability of Jacob's Law to churches. In your letter, you express the belief that churches are only subject to Jacob's Law when transporting children for specific school related activities. Therefore, you interpret Jacob's Law as inapplicable when churches are transporting youth groups to events unrelated to school activities. Finally, you request an opinion in order that churches not in compliance with the statute may comply with the law if need be.

Law / Analysis

Jacob's Law was introduced following an incident in which a Heathwood Hall Episcopal School 15-passenger van, which was transporting children as part of its summer program, collided with a tanker causing the death of 6-year-old Jacob Strebler. It was later discovered that the 15-passenger van did not meet the federal safety standards established for school buses. In response, the General Assembly enacted Jacob's Law during the 2000 Session. The Governor signed this legislation into law on May 26, 2000. Jacob's Law amended the South Carolina Code of Laws by adding Sections 56-5-195 and 56-5-196. Section 56-5-195 provides:

> (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.

Section 56-5-196 further reads as follows:

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.

We have previously advised that it is probable that the General Assembly intended for Section 56-5-195 to apply to churches in certain respects. In a November 30, 2001 opinion, we explained that:

[a] liberal reading of Section 56-5-195 would lend itself to an interpretation which include churches in those entities covered by its requirements. *Particularly those churches which undertake to transport school-aged children to or from school, school-related activities, or childcare [would likely be covered].* Our analysis, however, cannot end here as other factors must be taken into account interpreting this statute. As more fully addressed in the February 21, 2001, opinion, there are some indications that perhaps a more restrictive reading was intended. Accordingly, it is

> my opinion that legislative or judicial clarification is needed to fully answer your question. See, Op. Atty. Gen. November 30, 2001. (emphasis added).

It is our policy that previous opinions of this Office are not overruled or superseded unless clearly erroneous, or unless applicable law has changed. Ops. S.C. Atty. Gen. October 3, 1986. Thus, based upon your question we must determine whether the November 30, 2001 opinion should be superseded in accordance with this standard. We believe the November 30, 2001 opinion, as well as the February 21, 2001, opinion correctly stated the law.

Of course, the cardinal rule of legislative construction is to ascertain and effectuate legislative intent, whenever possible *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000). A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers. *Caughman v. Cola. Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991).

As we recognized in the February 21, 2001 opinion, although the Act "as originally drafted, ... was to apply only to public and private schools in the transportation of students," as "eventually passed, ... the Act is much more broadly written, applying to 'any entity transporting [students] to or from school, school related activities or child care ....'" Thus, we noted in the November 30, 2001 opinion that certain situations or factual scenarios exist in which churches may well be covered by Jacob's Law, i.e. when "churches ... undertake to transport school-aged children to or from school, school related activities or child care." We further commented that inasmuch as Jacob's Law is a statute remedial in nature, a court would likely give the law a broad reading. Both opinions concluded that Jacob's Law is ambiguous; thus we recommended either judicial or legislative clarification to make clear the intent of the General Assembly with respect to the scope and reach of this legislation.

It is also important to note that the November 30, 2001 opinion did not conclude that Jacob's Law was applicable to churches generally. We did not read the statute so broadly as to find that every church-related activity involving school-aged children is encompassed by the Act. Moreover, the February 21, 2001 opinion commented upon the meaning of the term "child care" as used in Jacob's Law. There, we noted that, while the statute would be entitled to a broad construction, a court could well interpret § 56-5-195 in conjunction with § 56-5-196. We stated as follows:

> ... [a]s mentioned above, statutes which are part of the same act are in pari materia and must be read together. In this case, § 56-5-195 applies to entities transporting students to or from school, school-related activities or daycare. Section 56-5-196 (Section 2 of Act 301) provides that parents have the option to designate a "child daycare center or other before or after school program as the student's origin or destination for school transportation." Reading the two sections together could lend itself to the following interpretation: that § 56-5-195 applies to entities transporting

> students to or from school, school-related activities, *or child care facilities designated pursuant to § 56-5-196.*

(emphasis added).

The foregoing interpretation presented in the February 21, 2001 appears to be consistent with the language of § 56-5-195 which speaks of "any entity" transporting "students to or from ... child care ...." It is also significant that the Legislature used the word "students" here, suggesting perhaps an intent to encompass only those activities of children who are acting in the capacity of a "preprimary, primary or secondary school" student, rather than covering all general recreational activities. Furthermore, the statute uses the phrase "*to or from* ... child care", again, indicating that the term "child care" was used in its more formal "daycare" sense rather than any activity in which school-aged children may be involved. These terms indicate that the Legislature's use of the phrase "child care" was not intended in any all-encompassing sense, but was more confined to the transportation of students to and from school, school-related activities or day care as generally defined in § 56-5-196.

It is also helpful to examine the title of Act No. 301 of 2001 because "... the title or caption of an act may be properly considered to aid in the construction of a statute and to show the intent of the Legislature." *Op. S.C. Atty. Gen.*, October 15, 2004, citing *Lindsay v. Southern Farm Bureau Cas. Ins. Co.*, 258 S.C. 272, 188 S.E.2d 374 (1972). Here, Act No. 301 states that the Act provides "That Any Entity Transporting Preprimary, Primary, Or Secondary School Students To or *From Certain Locations* ..." and utilizing a school bus, must do so in a school bus which meets certain safety requirements. (emphasis added). In addition, the Act's title states that this provision does not prohibit "The Transportation of Children To And From A Child Care Facility" in nonconforming vehicles, if each child is accompanied by a parent or legal guardian whose transportation is in connection with his work, education or training. Thus, the title of Act 301 strongly suggests that the term "child care" is used in the sense of a specific "location" and is a "facility" rather than an activity such as church-sponsored outing.

As we indicated in our previous opinions, § 56-5-195 is admittedly ambiguous. However, the interpretation of "child care," suggested in the February 21, 2001 opinion, is certainly a reasonable construction. Such an interpretation is in accord with the language of the statute as well as the intent as expressed in the Act's title. Moreover, the General Assembly has not amended § 56-5-195 and -196 in light of that earlier interpretation. *See*, *Op. S.C. Atty. Gen.*, December 30, 2004, referencing *Scheff v. Township of Maple Shade*, 149 N.J. Super. 448, 374 A.2d 43 (1977) [the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with the intent of the Legislature.]. Such absence of legislative change, in light of the views expressed in the February 21, 2001 opinion concerning the construction of the term "child care" is an indication that such interpretation was in accordance with the intent of the General Assembly in enacting Jacob's Law.

Conclusion

Your question – the applicability of Jacob's Law to the situation of a church transporting youth groups to and from events unrelated to school activities, such as events at the beach or mountains – is a difficult one. As we have recognized in previous opinions, Jacob's Law is a remedial statute, designed to protect the safety of children, and will likely be broadly construed by a court. Moreover, as we emphasized in an opinion dated February 21, 2001, Jacob's Law "as originally drafted, ... was to apply only to public and private schools in the transportation of students ...," but "[a]s eventually passed, ... the Act is much more broadly written, applying to 'any entity transporting [students] to or from school, school related activities, or child care ....'"

That having been said, it is our opinion that the February 21, 2001 opinion presented an interpretation of the term "child care" which a court is most likely to adopt. There, we noted that Jacob's Law could be interpreted as applying to entities "transporting students to and from school, school related activities, or child care facilities" designated pursuant to § 56-5-196. This construction of Jacob's Law, we believe, is most compatible with the language used in the statute, the rules of statutory construction, the Act's title, and the intent of the Legislature (as represented by no change in the statute since the opinion was issued in 2001). Thus, our reading of Jacob's Law is in agreement with yours – that the statute is inapplicable to churches transporting youth groups to church-related outings such as the beach or mountains. While Jacob's Law is applicable to "any entity" – including churches – the Legislature did not encompass situations beyond those expressly enumerated in the statute – the transportation of students to or from schools, school related activities or child care facilities.

However, we have cautioned previously, and as the July, 2006 deadline for compliance with Jacob's Law nears, we repeat our advice: should the foregoing interpretation of the statute not be in accordance with legislative intent, the General Assembly should clarify the Law consistent with the true legislative purpose. Our opinion herein is advisory only. Either judicial or legislative clarification is required to remove the currently existing ambiguities in the statute.

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General