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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

September 27, 2005

The Honorable Ralph E. Hoisington
Solicitor, Ninth Judicial Circuit
101 Meeting Street
Charleston, South Carolina 29401

Dear Solicitor Hoisington:

In a letter to this office you questioned whether a state healthcare facility, The Medical University of South Carolina, hereafter "MUSC", has the authority to completely ban smoking anywhere on its grounds, to include hospital owned and leased buildings, thoroughfares, parking lots and vehicles parked on MUSC property.

S.C. Code Ann. §§ 44-95-10 is the codified Clean Indoor Air Act of 1990. Pursuant to Section 44-95-20

> It is unlawful for a person to smoke or possess lighted smoking material in any form in the following public indoor areas except where a smoking area is designated or provided for in this chapter:
>
> ...(3) health care facilities as defined in Section 44-7-130, except where smoking areas are designated in employee break areas. However, nothing in this chapter prohibits or precludes a health care facility from being smoke free....

A criminal penalty is provided for a violation of such provision. See Section 44-95-50.

The term "health care facilities" is defined by S.C. Code Ann. § 44-7-130(10) as

> "Health care facility" means acute care hospitals, psychiatric hospitals, alcohol and substance abuse hospitals, methadone treatment facilities, tuberculosis hospitals, nursing homes, ambulatory surgical facilities, hospice facilities, radiation therapy facilities, rehabilitation facilities, residential treatment facilities for children and adolescents, habilitation centers for mentally retarded persons or persons with related conditions, and any other facility for which Certificate of Need review is required by federal law.

The term "hospital" is defined by the same provision as

> (12) "Hospital" means a facility organized and administered to provide overnight medical or surgical care or nursing care of illness, injury, or infirmity and may provide obstetrical care, and in which all diagnoses, treatment, or care is administered by or under the direction of persons currently licensed to practice medicine, surgery, or osteopathy.
> Hospital may include residential treatment facilities for children and adolescents in need of mental health treatment which are physically a part of a licensed psychiatric hospital. This definition does not include facilities which are licensed by the Department of Social Services.

Based upon my understanding of the functioning and operation of MUSC, it would fall within the definition of a "health care facility" for purposes of Section 44-95-20.

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966). Moreover, a statute must be interpreted with common sense to avoid an absurd result or unreasonable consequences. United States v. Rippetoe, 178 F.2d 735 (4th Cir. 1949); Ops. Atty. Gen. dated June 15, 2004 and May 20, 2004. A sensible construction, rather than one which leads to irrational results, is always warranted. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

You questioned whether MUSC, a "health care facility", could completely ban smoking anywhere on its grounds, to include hospital owned and leased buildings, thoroughfares, parking lots and vehicles parked on MUSC property. In examining your question it should be first noted that pursuant to S.C. Code Ann. § 59-123-60 (A)(1), MUSC is granted broad authority "to make bylaws and regulations considered expedient for the management of its affairs and its own operations not inconsistent with the constitution and laws of this State or of the United States." While the term "health care facilities" is defined by S.C. Code Ann. § 44-7-130(10) to include various types of hospitals and hospital-type facilities, in my opinion, such term may be defined to include areas beyond the main hospital itself. In its decision in Drew v. Schenectady County et al., 666 N.E.2d 1344 (N.Y.1996), the New York Court of Appeals construed the term "facilities" to include areas for parking. The Supreme Court of Michigan in its decision in W.A. Foote Memorial Hospital, Inc. v. Kelley, 211 N.W.2d 649, 658 (Mich. 1973) cited a definition of "hospital facilities" as meaning

> ...any building or structure suitable and intended for, or incidental or ancillary to, use by a hospital and shall include, but is not limited to, outpatient clinics, laboratories, laundries, nurses, doctors or interns residences, administration buildings, facilities for research directly involved with hospital care, maintenance, storage or utility facilities, parking lots and garages and all necessary, useful or related equipment, furnishings and appurtenances and all lands necessary or convenient as a site for the foregoing.'

In the case of Greater Anchorage Area Borough v. Sisters of Charity of the House of Providence, 553 P.2d 467 (Alaska, 1976), the Alaska Supreme Court determined that for purposes of tax exemption, "hospital facilities" included parking lots. Support for such a broad construction is also found in the definition of "hospital facilities" as set forth by S.C. Code Ann. § 44-7-1430 (f) which defines that term as

> (f) "Hospital facilities" means any one or more buildings, structures, additions, extensions, improvements, or other facilities, whether or not located on the same or contiguous site or sites (and including existing facilities), machinery, equipment, furnishings, or other real or personal property suitable for health care or medical care; and includes...laundries; residences and training facilities for nurses, interns, physicians, and other staff members; food preparation and food service facilities; administration buildings, central service, and other administrative facilities; communication, computer, and other electronic facilities; fire-fighting facilities; pharmaceutical and recreational facilities; storage space, X-ray, laser, radiotherapy, and other apparatus and equipment; dispensaries; utilities; vehicular parking lots and garages; office facilities for hospital staff members and physicians; and including, without limiting any of the foregoing, any other health and hospital facilities customarily under the jurisdiction of or provided by hospitals, or any combination of the foregoing, with all necessary, convenient, or related interests in land, machinery, apparatus, appliances, equipment, furnishings, appurtenances, site preparation, landscaping, and physical amenities. (emphasis added).

Consistent with such definitions, in my opinion the term "health care facility" for purposes of a smoking ban should be construed broadly to include hospital owned and leased buildings, thoroughfares, parking lots and vehicles parked on MUSC property.

Additional support for such conclusion is found in the fact that pursuant to subsection (1), it is unlawful to smoke in the public indoor areas of

> ...public schools and preschools where routine or regular kindergarten, elementary, or secondary educational classes are held including libraries. Private offices and teacher lounges which are not adjacent to classrooms or libraries are excluded. However, this exclusion does not apply if the offices and lounges are included

> specifically in a directive by the local school board. This section does not prohibit school district boards of trustees from providing for a smoke-free campus;....(emphasis added).

Therefore it is specifically provided that a school district may make an entire campus smoke-free. Such broad grant of authority should be compared with that of subsection (3) which provides that "nothing in this chapter prohibits or precludes a health care facility from being smoke free." In my opinion, the two provisions may be construed in a similar manner so as to support the conclusion that both health care facilities and schools may be made entirely smoke free.

As set forth in the preamble to Act No. 503 of 1990, the Clean Indoor Air Act, "...it is desirable to accommodate the needs of nonsmokers to be free from exposure to tobacco smoke while in public indoor places...." Therefore, the intent to provide smoke free indoor places is clearly set forth. Included in the specifically referenced "public indoor places" to which the provisions of the Act are applicable are "health care facilities". Therefore, it is clear that the general intent of the legislation was to provide for smoke free indoor places at health care facilities, including MUSC. However, by additionally specifically providing that "nothing in this chapter prohibits or precludes a health care facility from being smoke free", it is apparent that the legislature intended that sites beyond indoor places at a health care facility may be made smoke free. Therefore, the smoking ban would be applicable to any location on the grounds of a health care facility, including hospital owned and leased buildings, thoroughfares, parking lots and vehicles parked on MUSC property.

Consistent with the authorities set forth above, in my opinion, MUSC has the authority to completely ban smoking anywhere on its grounds, to include hospital owned and leased buildings, thoroughfares, parking lots and vehicles parked on MUSC property. If there are any questions, please advise.

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General