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ATTORNEY GENERAL

September 21, 2006

Deirdra T. Singleton, Deputy Director/General Counsel
South Carolina Department of Health and Human Services
Post Office Box 8206
Columbia, South Carolina 29202-8206

Dear Ms. Singleton:

We received your letter requesting an opinion of this Office concerning the interpretation of "Jacob's Law." In particular, you are concerned with the interpretation of section 56-5-195 of the South Carolina Code. You informed us that:

> South Carolina Department of Health an Human Services (SCDHHS) is the single state agency in South Carolina responsible for administration of the Medicaid program. Pursuant to Title XIX of the Social Security Act, SCDHHS is required to ensure necessary transportation for Medicaid beneficiaries to and from providers for covered medial services.
>
> SCDHHS has contracts with twenty-three (23) transportation providers covering all forty-six (46) counties in the state. The providers may use their own vehicles to transport beneficiaries, they may lease vehicles from a private entity, or they may lease vehicles from State Fleet Management.
>
> The Non-Emergency Medicaid Transportation program provides for beneficiary transportation to and from services covered under the Medicaid State Plan at negotiated rates of reimbursement. Transportation providers furnish and coordinate non-emergency transportation services to assure beneficiaries arrive to and depart from Medicaid service providers during regular business hours. Currently, transportation services can be rendered via van, automobile, bus, or other appropriate method of transportation. Occasionally, for purposes of efficiency and to avoid missing school, Medicaid transportation providers transport children to and/or from school in connection with the child's medical appointment.

Request Letter

Thus, as you state: "The SCDHHS is seeking an opinion on the following question: Does S.C. Code § 56-5-195, School bus safety standards, commonly known as 'Jacob's Law,' apply to providers of Medicaid Non-Emergency Transportation?"

Law/Analysis

The Legislature enacted section 56-5-195 of the South Carolina Code (2006) in 2000 via act 301. This statute provides as follows:

> (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.

S.C. Code Ann. § 56-5-195.

As we noted in prior opinions of this Office, the Legislature passed this statute in reaction to a fatal accident involving a 15-passenger van and a tanker truck. Op. S.C. Atty. Gen., June 10, 2005. Jacob Strebler, a six-year-old boy, was killed while riding in the van operated by Heathwood Hall Episcopal School. Id. The van did not meet the federal safety standards for school busses. Id. Thus, the Legislature enacted this statute known as "Jacob's Law," in 2000. Id.

A court has yet to interpret this legislation. However, several opinions this Office attempted to address the scope of this statute. In an opinion issued on February 21, 2001, we discussed whether this statute "expands the scope of its applicability outside school, school related activities, or childcare transportation." Op. S.C. Atty. Gen., February 21, 2001. Specifically, this opinion concerned the statute's applicability to vans used by the City of Aiken's Recreation Department. Id. In construing section 56-5-195, we found as follows:

> Given the circumstances which lead to the passage of Act 301, it is clear that the Act is remedial in nature. Moreover, it is clear that the general intent of the Legislature is to better provide for the health and welfare of our State's children. As it is remedial and as it relates to the safety of our children, it must be construed in a liberal manner to effectuate the general intent of the Legislature.
>
> A liberal reading of the statute would give rise to an expanded application of the terms of the Act. Accordingly, it could be possible for the prescriptions of § 56-5-195 to apply to municipalities, such as the City of Aiken, when they undertake to transport children in 15-person vans in certain situations.

Id. In addition, we examined the legislation as originally drafted finding it initially was "to apply only to public and private schools in the transportation of students." Id. However, as passed, the statute

> is much more broadly written, applying to "any entity transporting [students] to or from school, school related activities or child care . . ." This broadening from the original draft to the statute as enacted appears consistent with a legislative intent that the statute be

> interpreted liberally. Moreover, the fact that the Legislature has provided for a 6-year window for "entities" to use "nonconforming vehicles" purchased prior to July 1, 2000, indicates an intention that prescriptions of the statute apply broadly.

Id.

In our 2001 opinion, we also considered other factors indicating that section 56-5-195 should be construed more narrowly. Id. For instance, we came to this conclusion in reading section 56-5-195 in conjunction with section 56-5-196 of the South Carolina Code (2006). Id. Section 56-5-196 provides: "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 noted, when this section is read with section 56-5-195 the two sections could be interpreted as follows: "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." Id. Thus, indicating "[t]his type of reading would apparently exclude the described activities of the City of Aiken." Id. Furthermore, we commented on the absence of a fiscal impact statement for the counties and municipalities, which traditionally is required when a bill requiring the expenditure of State funds is introduced. Id. We surmised the absence of a fiscal impact statement for counties and municipalities indicates "the Act was not intended to speak to municipalities transporting children, such as the City of Aiken." Id. Finding support for construing section 56-5-195 both broadly to include municipalities and narrowly to exclude them, we ultimately concluded: "the only opinion I can render is that the statutes' ambiguities give rise to the need for legislative or judicial clarification." Id.

In November of 2001, we again addressed the scope of section 56-5-195. Op. S.C. Atty. Gen., November 30, 2001. In that opinion, we considered whether church groups fall under the auspices of this provision. Id. We considered the same theories of interpretation discussed in our February 2001 opinion and came to the same conclusion that judicial or legislative clarification of this statute is needed. Id.

In our most recent attempt to interpret section 56-5-195, similar to our November 2001 opinion, we considered the applicability of this statute to churches. Op. S.C. Atty. Gen., June 10, 2005. We discussed the findings in our prior opinions and concluded the interpretations construing section 56-5-195 more narrowly are consistent with the language of this section. Id.

> [T]he 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.

Id. We also considered the title of act 301 of 2001, which we stated 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.

Id. Ultimately, we agreed with the requester's conclusion

> 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.

Id. Nevertheless, despite our interpretation of section 56-5-195, we cautioned that the need for judicial or legislative clarification remains. Id.

Although your request deals with the application of section 56-5-195 to SCDHHS, rather than a municipality or a church, we find our prior opinions pertinent to resolving the issue you present. We again reiterate the need for judicial or legislative clarification regarding the scope of section 56-5-195. Nevertheless, in keeping with our November 2001 and our 2005 opinions, we do not believe section 56-5-195 is generally applicable to SCDHHS in transporting children to and from providers of medical services. However, you state in your letter, "[o]ccassionally, . . . Medicaid transportation providers transport children to and/or from school in connection with the child's medical appointment." Section 56-5-195 states it is applicable to "any entity transporting preprimary, primary, or secondary school students to or from school, school-related activities, or

child care . . . ." (emphasis added). Thus, as we expressed in prior opinions, transportation of students to and from schools is expressly encompassed under this provision. Accordingly, we believe a court would interpret section 56-5-195 as encompassing situations in which students are transported to or from school as a part of the Medicaid transportation program.

However, based on the information provided in your request, section 56-5-195 may not be applicable despite the Medicaid transportation program's transport of students to and from school. You informed us that the Medicaid transportation program's services may be rendered "via van, automobile, bus or other appropriate method of transportation." Section 56-5-195 applies only to an entity "utilizing a vehicle defined as a 'school bus' pursuant to 49 U.S.C. Section 30125." S.C. Code Ann. § 56-5-195(A). Thus, before you consider the application of section 56-5-195 to a vehicle operating under the Medicaid transportation program, we direct you to section 30125 of title 49 of the United States Code to determine if the vehicles utilized by the Medicaid transportation program meet this provision's definition of a "school bus."

Conclusion

Although we feel the need for judicial or legislative clarification remains, based on our analysis in prior opinions, we do not believe section 56-5-195 of the South Carolina Code, known as Jacob's Law, is generally applicable to SCDHHS with regard to the transport of Medicaid beneficiaries to and from Medicaid providers. However, when, as you mentioned in your letter, the Medicaid transportation provided transports a preprimary, primary, or secondary school student to or from school, we believe Jacob's Law becomes applicable and thus, SCDHHS must comply with its provisions presuming such transportation is provided in a vehicle defined as a school bus pursuant to the applicable federal law.

Very truly yours,

Cydney M. Milling

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REVIEWED AND APPROVED BY:

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