



HENRY McMASTER
ATTORNEY GENERAL

February 9, 2006

The Honorable Inez Moore Tenenbaum
State Superintendent of Education
State of South Carolina Department of Education
1429 Senate Street
Columbia, South Carolina 29201

Dear Superintendent Tenenbaum:

We issue this opinion in response to your letter requesting guidance on the interpretation of section 59-63-30 of the South Carolina Code. You state:

My question involves the definition of parent as used in this statute. Because S.C. Code Ann. § 59-63-30 does not differentiate custodial from non-custodial, the agency attorneys interpret the statute as applying to either custodial or non-custodial parents, meaning that either parent could enroll a child in a public school, if that child lives with the parent. Some school districts interpret this statute as only the custodial parent has that right to enroll their children in schools. In those cases, children are being refused admission into school, even though they live with a parent in the school district.

After our review of section 59-63-30 of the South Carolina Code and employing the requisite rules of statutory construction, in our opinion, this section entitles a child to attend a public school located in a district if either of the child's parents are residents of that district.

Law/Analysis

Section 59-63-30 of the South Carolina Code (2004) provides:

Children within the ages prescribed by § 59-63-20 shall be entitled to attend the public schools of any school district, without charge, only if qualified under the following provisions of this section:

- (a) Such child resides with its parent or legal guardian;

(b) The parent or legal guardian, with whom the child resides, is a resident of such school district; or

(c) The child owns real estate in the district having an assessed value of three hundred dollars or more; and

(d) The child has maintained a satisfactory scholastic record in accordance with scholastic standards of achievement prescribed by the trustees pursuant to § 59-19-90; and

(e) The child has not been guilty of infraction of the rules of conduct promulgated by the trustees of such school district pursuant to § 59-19-90.

Section 59-63-30 allows a child to attend a public school free of charge only if it meets one of two qualifications. In this opinion, we are only concerned with the first qualification. This qualification requires the child to reside with "its parent or legal guardian" and that parent or legal guardian, with whom the child resides, must be a resident of the school district in which the school is located.

In order to interpret section 59-63-30, we apply the rules of statutory interpretation. "The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the Legislature." Johnston v. South Carolina Dep't of Labor, Licensing, and Regulation, 365 S.C. 293, 296, 617 S.E.2d 363, 364 (2005). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Kiriakides v. United Artists Comm'n, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994). Courts must apply the plain meaning of a statute when its language is unambiguous and conveys a clear meaning. Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002). However, when a statute is ambiguous it must be construed according to settled rules of construction. Grant v. City of Folly Beach, 346 S.C. 74, 79, 551 S.E.2d 229, 331 (2001). "Statutes which are part of the same legislative scheme should be construed together." State v. Gordon, 356 S.C. 143, 15, 588 S.E.2d 105, 109 (2003). "The interpretation of a term set forth in a statute should support the statute and should not lead to an absurd result." Miller v. Lawrence Robinson Trucking, 333 S.C. 576, 582, 510 S.E.2d 431, 434 (Ct. App. 1998).

Section 59-63-30 simply states a child is qualified to attend a school in its parent's district free of charge if the child resides with "its parent." The statute, however, does not expressly require the parent to be the child's custodial parent to qualify. The South Carolina School Code, which contains section 59-63-30, does not define the word "parent." S.C. Code Ann. § 59-1-10 et seq. (2004 & Supp. 2005). "Where the legislature elects not to define a term in a statute, the courts will interpret the term in accord with its usual and customary meaning." Adoptive Parents v. Biological

Parents, 315 S.C. 535, 543, 446 S.E.2d 404, 409 (1994). Therefore, we look to the usual and customary meaning of the term “parent.”

Section 20-7-30 of the South Carolina Children’s Code (1976) defines “parent” as “biological parent, adoptive parents, step-parent, or person with legal custody.” Webster’s Dictionary defines “parent” as “a father or mother” Webster’s New Word Dictionary 1033 (2d College ed. 1976). Neither of these definitions of the word parent connote an interpretation that only custodial parents are considered parents. Thus, reading the statute in accordance with its plain and ordinary meaning, we do not find the term “parent” only means a custodial parent.

This Office issued an opinion dated August 10, 1979 addressing the interpretation of section 21-752.1 of the South Carolina Code, now codified as section 59-63-30. In that opinion, this Office determined “it is only necessary that a child live either with its mother or father to come within the qualifications set forth [in section 21-752.1 of the South Carolina Code].” Op. S.C. Atty. Gen., August 10, 1979. Although that opinion addressed the interpretation of section 59-63-30 in light of the former common law recognizing the residence of the father is the residence of the child, we find it remains applicable. In addition, we find it significant that in the thirty years since publication of that opinion, the Legislature did not take action to clarify this term to specify that a child must live with a particular parent in order to attend a public school in that parent’s district. Thus, consistent with the common and ordinary definition of the term “parent,” “resides with its parent” does not suggest a custody requirement.

We find further support for this interpretation by reading section 59-63-31 of the South Carolina Code (2004 & Supp. 2005) in conjunction with section 59-63-30. Section 59-63-31, adjacent to section 59-63-30 in the South Carolina School Code, provides additional means by which a child may qualify for attendance at a public school. Section 59-63-20(A) allows a child to attend the public schools within a district, if it meets the following requirement in addition to satisfying the requirements of sections 59-63-30(d) and (e):

(1) the child resides with one of the following who is a resident of the school district:

(a) a person who is not the child’s parent or legal guardian to whom the child’s custody has been awarded by a court of competent jurisdiction;

(b) a foster parent or in a residential community-based care facility licensed by the Department of Social Services or operated by the Department of Social Services or the Department of Juvenile Justice; or

(c) the child resides with an adult resident of the school district as a result of:

(I) the death, serious illness, or incarceration of a parent or legal guardian;

(ii) the relinquishment by a parent or legal guardian of the complete control of the child as evidenced by the failure to provide substantial financial support and parental guidance;

(iii) abuse or neglect by a parent or legal guardian;

(iv) the physical or mental condition of a parent or legal guardian is such that he or she cannot provide adequate care and supervision of the child; or

(v) a parent's or legal guardian's homelessness, as that term is defined by Public Law 100-77;

(2) the child is emancipated and resides in the school district;

(3) the child is homeless or is a child of a homeless individual, as defined in Public Law 100-77, as amended; or

(4) the child resides in an emergency shelter located in the district.

Section 59-63-31 further clarifies the term "resides," as used in section 59-63-30. The context in which the term "resides" is used in section 59-63-31 implies the physical location of the child, rather than the legal relationship between the child and those with whom the child resides. This is evident by the fact that a child cannot be placed in the custody of an emergency shelter in which he or she may reside. Furthermore, a child is not be in the custody of anyone if they are emancipated. Because sections 59-63-30 and 59-63-31 are in sequence with one another, we presume the Legislature intended for the term "resides," as used in both statutes, to have the same meaning. Based on this presumption, we find the term "resides" in section 59-63-30 also refers to the location where the child lives. Accordingly, to interpret the term "parent" to mean only a custodial parent, would lead to an absurd result. If a child lived with its non-custodial, in addition to not being able to attend a school in the non-custodial parent's district, the child would not satisfy the qualifications to attend a school in the custodial parent's district either because the child would not "reside" with the custodial parent. This would thus leave a child unqualified to attend school in either parent's district.

Section 59-63-31 also clarifies the legislative intent of section 59-63-30. Section 59-63-31 allows a child to attend a school based on the residence of an adult. In many of the instances listed, a court did not assign legal custody of the child to the adult with whom the child is living. Therefore, this statute indicates the Legislature's focus on the residence of the adult with whom the child is living, rather than whether the child has a legal relationship to that adult. Based on our perception of the Legislature's intent, to conclude a child may not attend a school in the district of the non-custodial parent, even though the child resides with that parent and the parent and the child have recognized legal relationship to one another, is illogical.

Finally, allowing a child to attend a public school in the non-custodial parent's district comports with the rights and duties of a parent as pronounced by the Legislature in section 20-7-100 of the South Carolina Code (Supp. 2005). This section provides:

The mother and father are the joint natural guardians of their minor children and are equally charged with the welfare and education of their minor children and the care and management of the estates of their minor children; and the mother and father have equal power, rights, and duties, and neither parent has any right paramount to the right of the other concerning the custody of the minor or the control of the services or the earnings of the minor or any other matter affecting the minor. Each parent, whether the custodial or noncustodial parent of the child, has equal access and the same right to obtain all educational records and medical records of their minor children and the right to participate in their children's school activities unless prohibited by order of the court. Neither parent shall forcibly take a child from the guardianship of the parent legally entitled to custody of the child.

S.C. Code Ann. § 20-7-100.

Section 20-7-100 proclaims both parents are natural guardians of their children and charges both with the responsibility of educating their children. Thus, to presume one parent, although not the legal custodian of the child but the parent with whom the child resides, does not have the right to send their child to the school district in which that parent lives, would create an unnecessary obstacle to a parent's statutory duties. We do not believe the Legislature intended such a result.

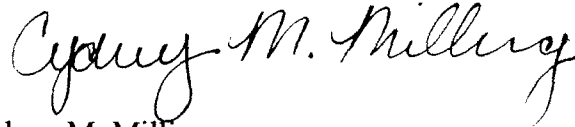
Conclusion

Section 59-63-30 of the South Carolina Code, on its face, does not specify a child, in order to attend a public school in a district, must reside with its custodial parent living in that district. Thus, in our opinion, section 59-63-30 allows a child to attend a public school in the district in which either parent resides, assuming the child resides with the parent located in that district. Such

The Honorable Inez Moore Tenenbaum
Page 6
February 9, 2006

conclusion is consistent with the plain and ordinary meaning of the term "parent," and in our view, if the Legislature intended the word "parent" to mean only the custodial parent, it would have provided as such in the statute.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General