March 7, 2008

The Honorable Ronnie W. Cromer
Senator, District No. 18
P. O. Box 142
Columbia, South Carolina 29202

The Honorable Walton J. McLeod
Member, House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Senator Cromer and Representative McLeod:

In a letter to this office you questioned the applicability of S.C. Code Ann. § 56-5-195, known as "Jacob's Law", to three charter buses purchased by the Mid-Carolina High School Band Booster Club. The title to these three charter buses is in the name of the Newberry County School District. The buses are used to transport members of the Mid-Carolina High School Band on short and long range trips. You indicated that the buses were purchased subsequent to the July 1, 2000 effective date of Jacob's Law.

Section 56-5-195 states that

> (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,[1] 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

[1]The term "schoolbus" is defined by 49 U.S.C.A. § 30125 as "...a passenger motor vehicle designed to carry a driver and more than 10 passengers, that the Secretary of Transportation decides is likely to be used significantly to transport preprimary, primary, and secondary school students to or from school or an event related to school."

> 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.
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> (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**.
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> (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.
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> (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.
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> (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. (emphasis added).

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. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

As noted in a prior opinion of this office dated June 10, 2005, the General Assembly enacted Section 56-5-195 following a fatal accident involving a 15-passenger van and a tanker truck. Jacob Strebler, a six-year-old boy, was killed while riding in the van operated by Heathwood Hall Episcopal School. The van being used did not meet the federal safety standards for school buses

and, in response, the General Assembly enacted the referenced statute known as "Jacob's Law," in 2000 as Act No. 301 of 2000.

Based upon my review, a court has not as yet interpreted Section 56-5-1015. However, several opinions this Office have construed the statute. An opinion issued on February 21, 2001, was concerned with whether this provision "expands the scope of its applicability outside school, school related activities, or childcare transportation." It was specifically questioned as to whether the statute was applicable to vans used by the City of Aiken's Recreation Department. Construing Section 56-5-195, this office concluded that:

> 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.
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> 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. (emphasis added).

The opinion noted, however, that it appears that the statute as originally drafted finding was "to apply only to public and private schools in the transportation of students." As noted further, however, 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.

The 2001 opinion, however, also considered other factors indicating that Section 56-5-195 should be construed more narrowly such as reading Section 56-5-195 in conjunction with S.C. Code Ann. § 56-5-196. The latter provision states that "[t]he 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." It was noted that when this provision is read along 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." It was indicated that "[t]his type of reading would apparently exclude the described

activities of the City of Aiken." Also, reference was made to the absence of a fiscal impact statement for the counties and municipalities which typically is required when a bill requiring the expenditure of State funds is introduced. The opinion indicated that 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." The opinion concluded that inasmuch as there was support for construing Section 56-5-195 both broadly to include municipalities and narrowly to exclude them, it was concluded that "the only opinion I can render is that the statutes' ambiguities give rise to the need for legislative or judicial clarification."

An opinion dated November 30, 2001 also construed Section 56-5-195 dealing with the question of whether church groups were included within the auspices of such provision. The same theories of interpretation referenced in the February, 2001 opinion were alluded to and ultimately it was concluded that judicial or legislative clarification of this statute was needed.

Another opinion dated June 10, 2005 also construed Section 56-5-195 as to its applicability to churches. Reference was made to the noted prior opinions and concluded that the interpretations construing Section 56-5-195 more narrowly are consistent with the language of this section. It was noted that the November 30, 2001 opinion did not conclude that Jacob's law was applicable to churches generally. Reference was made to the language of Section 56-5-195 which speaks of "any entity" transporting "students to or from… child care…" It was noted that the General Assembly used the word "students" here which inferred 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. It was concluded that these terms indicated that the General Assembly'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.

The June, 2005 opinion also considered the title of Act No. 301 of 2000 noting that "...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." See: Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972). The title to the Act states that the Act provides "That Any Entity Transporting Preprimary, Primary, Or Secondary School Students To or From Certain Locations…" using a school bus must do so in a school bus which meets certain safety requirements. 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. Therefore, it was concluded that the title to Act No. 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.

The opinion ultimately concluded that Section 56-5-195 was inapplicable to churches transporting youth groups to church-related outings such as the beach or mountains. It was further stated that

> ...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....

It was further stated as follows:

> [t]hat 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 Section 56-5-106." 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.

It was further cautioned that the need for judicial or legislative clarification remains.

The referenced September 21, 2006 opinion dealt with the question of the applicability of Section 56-5-195 to the State Department of Health and Human Services (SCDHHS) which is given the responsibility in administering the Medicaid program to ensure necessary transportation for Medicaid beneficiaries to and from providers for covered medical services. While noting again the need for judicial or legislative clarification as to the scope of Section 56-5-195, it was concluded that consistent with prior opinions, it was our conclusion that Section 56-5-195 was generally inapplicable to SCDHHS in transporting children to and from providers of medical services. However, it was noted in the request letter that "[o]ccassionally,… Medicaid transportation providers transport children to and/or from school in connection with the child's medical appointment." Reference was made to the fact that 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). Therefore, as expressed in prior opinions, transportation of students to and from schools is expressly encompassed under this provision. The

opinion concluded that it was our contention that 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.[2] As to such situation, it was stated that "...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."

In resolving your question reference must be made to the construction of subsection (E) of Section 56-5-195 which states:

> (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. (emphasis added).

It appears that such provision only applies to common carriers, such as charter bus companies, that are on occasion used to transport school students and that are not "exclusively engaged" in such activity where these companies "own and operate these vehicles". Such provision authorizes these companies to transport students in such circumstances. Such construction is supported by the earlier language in that provision which states that "[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." This specific provision appears applicable to the situation involving the charter buses purchased by the Mid-Carolina High School Band Booster Club. Subsection (A), again, provides that "[e]ffective July 1, 2000, any entity

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[2]However, it was noted in that opinion that

> ...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."

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." As noted in the opinion issued on February 21, 2001, inasmuch as Section 56-5-195 "...is remedial and...relates to the safety of our children, it must be construed in a liberal manner to effectuate the general intent of the Legislature." (emphasis added).

As indicated above, judicial or legislative clarification would be advantageous in resolving questions such as yours. However, consistent with the prior opinions of this office, above, as to your question of whether Section 56-5-195, known as "Jacob's Law", is applicable to the three charter buses purchased by the Mid-Carolina High School Band Booster Club where title to these three charter buses is in the name of the Newberry County School District and the buses are used to transport members of the Mid-Carolina High School Band on short and long range trips, it is the opinion of this office that Jacob's Law would be applicable. Vehicles used in such capacity must meet federal school bus safety standards as set forth in 49 U.S.C. Section 30101 et seq. and any successor statutes, along with all applicable federal regulations. These charter buses could not be allowed to be used for the transportation of band students unless those vehicles meet these federal school bus safety standards.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Deputy Attorney General