HENRY MCMASTER
ATTORNEY GENERAL

October 10, 2008

The Honorable Joel Lourie
Senator, District No. 22
P. O. Box 6212
Columbia, South Carolina 29260

The Honorable Laurie Slade Funderburk
Member, House of Representatives
P. O. Box 188
Camden, South Carolina 29021

Dear Senator Lourie and Representative Funderburk:

You have requested an opinion of this office regarding the applicability of S.C. Code Ann. § 56-5-195, known as "Jacob's Law", to former charter buses presently owned and operated by the school district which were purchased by the Lugoff-Elgin band. It is my understanding 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 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.

---

[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."

> (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. (emphasis added).

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.

This office in a prior opinion dated March 7, 2008 determined that Section 56-5-195 was applicable to charter buses purchased by the Mid-Carolina High School Band Booster Club where title to the buses was in the name of the Newberry County School District and the buses were used to transport members of the Mid-Carolina High School band on short and long range trips. As a result, it was determined that these buses 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.

This office has now been asked to particularly review the provision in subsection (E) noted above which, again, states that

> [n]othing 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.

Admittedly, the highlighted section is ambiguous, particularly that portion which provides an exemption as to "entities subject to this section which own or operate these vehicles." For purposes of your request, it must be determined whether the word "entities" applies to the owners or operators of the buses purchased by the Lugoff-Elgin band.

In examining your question, the March 7, 2008 opinion referenced another prior opinion of this office dated February 21, 2001 which was concerned with whether Section 56-5-195 was expansive in regard to "the scope of its applicability outside school, school related activities, or childcare transportation." It was specifically questioned in the 2001 opinion 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:

> [g]iven 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

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 could 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 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, however, 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.

Consistent with such prior opinions, as to your question regarding the interpretation of subsection (E), judicial or legislative clarification would be helpful. However, in the absence of such, this office has concluded that such provision could be interpreted to conclude that the exception for "entities subject to this section which own or operate these vehicles" would be applicable to the owners or operators of the former charter buses purchased by the Lugoff-Elgin band. This office has been advised that the legislative intent was to make the this exception applicable as to situations such as that involving the Lugoff-Elgin bands. Generally, 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). As noted in a prior opinion of this office dated May 6, 2008 citing Kiriakides v. United Artists Commc'n, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994), "(a)ll 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.

The February 21, 2001 opinion referenced previously made reference to the original language of Act No. 301 which created Section 56-5-195. As stated in the opinion, such language was as follows:

SECTION 1. The 1976 Code is amended by adding:

Section 56-5-195. Students transported in a vehicle designed or used to transport more than ten passengers, including the driver, by a school, public or private, must be transported in a school bus as defined in Section 56-5-190, except that a student may also ride on an Activity School Bus as provided in Section 59-67-30(B). Nothing in this section applies to a vehicle purchased before July 1, 1999. However, all vehicles purchased before July 1, 1999 must be in full compliance with this section by July 1, 2000. During this two-year transition period, all vehicles referred to in this section that are not in compliance must display a decal beside the front entrance door in a location that is clearly and plainly visible by a boarding passenger standing on the ground outside the vehicle. This decal must contain four-inch-high black letters and state: PURSUANT TO STATE LAW, THIS VEHICLE DOES NOT MEET THE SAFETY REQUIREMENTS OF A SCHOOL BUS. The decal must be approved and issued by the Department of Public Safety when the vehicle's license is issued or renewed. If the vehicle has a government license plate, the decal must be in place by September 1, 1999. The Department of Public Safety may not charge more than one dollar per decal.

SECTION 2. The 1976 Code is amended by adding:

Section 56-5-196. The Department of Transportation shall notify all registered owners of a bus or van used to transport children about the provisions contained in Sections 59-67-30 and 56-5-195 when the vehicle's license is issued or renewed.

SECTION 3. Section 56-5-190 of the 1976 Code is amended to read:

Section 56-5-190. Every motor vehicle that complies with the color and identification requirements set forth in Section 59-67-30 and State Board of Education Regulations and Specifications Pertaining to School Buses which is used to transport children to or from school or in connection with school activities, but not including buses operated by common carriers not exclusively engaged in the transportation of school students and vehicles having school bus markings temporarily removed or covered, is a "school bus."

SECTION 4. Section 59-67-30 of the 1976 Code is amended to read:

Section 59-67-30. (A) A school bus while being used in the transportation of school pupils must be substantially painted with high visibility yellow paint, conforming and similar to National School Bus chrome yellow, and must display the following markings:

> (1) Sides - The words "SOUTH CAROLINA PUBLIC SCHOOLS" in not less than four- inch- high letters located directly under the windows of state-owned or operated school buses.
>
> (2) Back - The words "SCHOOL BUS" in letters not less than eight inches high located between the warning signal lamps.
>
> (3) Front - The words "SCHOOL BUS" in letters not less than eight inches high located between the warning signal lamps.
>
> The State Board of Education is hereby authorized to adopt and to enforce whatever additional regulations regarding the painting and marking of school buses which they may deem necessary and proper.
>
> (B) A school bus that does not comply with these requirements must be painted a color other than yellow and is not entitled to the privileges and protections of a school bus operating on the highways of this State. These buses must be identified as activity school buses and must display a decal beside the front entrance door in a location clearly and plainly visible by a boarding passenger standing on the ground outside the vehicle. The decal must contain four-in-high black leters[sic] that state: PURSUANT TO STATE LAW, THIS BUS MAY NOT MAKE STOPS ON HIGHWAYS TO LOAD OR UNLOAD PASSENGERS. The decal must be approved and issued by the Department of Public Safety when the vehicle's license is issued or renewed. If the vehicle has a government license plate, the decal must be in place by September 1, 1999. The Department of Public Safety must not charge more than one dollar for each decal.
>
> SECTION 5. This act takes effect upon approval by the Governor, except that Sections 1, 2, and 3 take effect July 1, 1999.

As referenced, the Act as originally drafted made specific reference to school buses. Moreover, the final version of the Act as spelled out in Section 56-5-195 references a "school bus." This specific referencing of "school buses" aids in construing such provision as being inapplicable to any vehicle which is not considered a traditional school bus.

> As specified in subsection (E),
>
> [n]othing 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.

The exclusion for "common carriers" is apparent and argues for a broadened reading of the exception. Such language must have some meaning. It is generally held "...that there is a presumption that the legislature intended to accomplish something with a statute rather than to engage in a futile exercise." Berkebile v. Outen, 311 S.C. 50, 53-54, 426 S.E.2d 760, 762 (1993). Therefore, such a broadened reading supports the conclusion that, in the opinion of this office, such provision should be interpreted to conclude that the exception for "entities subject to this section which own or operate these vehicles" would be applicable to the owners or operators of the former charter buses which hold over thirty passengers purchased by the Lugoff-Elgin band.

Such would be a "reasonable construction" as referenced in an opinion of this office dated June 10, 2005 which also dealt with "Jacob's Law." As a result, a court could conclude that these former charter buses would not be required to meet federal school bus safety standards as required generally for school buses. Such an interpretation would thus treat common carriers and a school district now owning or operating former charter buses similarly. Of course, as indicated previously, judicial or legislative clarification of the statute would be advantageous. Pending such, in order to lessen any risk of liability, it is recommended that the school district may seek specific parental permission for children to ride on these band buses.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General