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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 21, 2001

Richard L. Pearce, Esquire
City Solicitor and Staff Attorney
City of Aiken
Post office Box 1177
Aiken, South Carolina 29802

Re: Your Letter of September 21, 2000
§§ 56-5-195 & 196

Dear Mr. Pearce:

You have requested an opinion from this Office concerning the application of S.C. Code Ann.§§ 56-5-195 and 56-5-196. Specifically, you pose the following:

> My question to you is whether the scope of Act 301 amending Section 56-5-195 expands the scope of its applicability outside school, school related activities, or childcare transportation.
>
> I also need to know what the Attorney General would consider the legislative intent behind the use of the words school, school related activities, or childcare since the act itself does not contain the definition.

By way of background, you indicate that "[t]he City of Aiken uses vans in its Recreation Department to transport children during the summer months for day camp functions. Furthermore, during the course of the year, the Recreation Department has various programs which involve children. The City is not transporting children in these vans to school or school related activities or daycare facilities." Further, during a telephone conversation, you advised that the City of Aiken transports school-aged children in a 15-passenger van to events and places such as movies, parks, the zoo, etc. You indicated that the City offers these programs throughout the year, not just during the summer months when school is out of session.

Leonard Scott

As passed by the General Assembly, Act 301 created §§ 56-5-195 and 56-5-196 and reads as follows:

> "Section 56-5-195. (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.
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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.
>
> (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."

Origin or destination for school transportation

SECTION 2. The 1976 Code is amended by adding:

"Section 56-5-196. 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.

Your concern over the scope of the Act was created when you received a "communication from the South Carolina Municipal Association [SCMA] which warns that Act # 301 ... directly effects municipalities who are using vans to transport children." Further, you provided this Office with a copy of a Newsletter from the South Carolina Recreation and Parks Association [SCRAP] for September/October of 2000 which reported SCRAP's view and the SCMA's view that Act 301 is applicable to municipalities transporting children in such manners as the City of Aiken does. The Newsletter quotes an attorney for the SCMA as saying "...Field trip transportation and summer programs for school-age children could very well be considered educational or school-related activities. I think a court would likely hold that those activities are covered by ACT 301. The statute is not limited to schools, but applies to any entity transporting kids, and would be applicable to municipalities which engage in such activities." The Executive Director of SCMA indicates that the law "left some very broad interpretations" and goes on to express a concern for a municipality's liability should a "van" be involved in an accident.

A discussion of your questions requires the employment of a few basic principles of statutory construction. The primary goal of statutory interpretation is to ascertain the intent of the general assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the statutes operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). In determining the meaning of one statute, it is proper to consider other statutory provisions relating to the same subject matter. Southern Ry. Co. v. S.C. State Hwy. Dept., 237 S.C. 75, 115 S.E.2d 685 (1960). Statutes which are from the same act are considered in pari materia and must be construed together harmoniously, so far as reasonably possible. S.C. Atty. Gen. Op. No. 84-16, citing 2A Sutherland Statutory Construction § 51.02; also Raggio v. Woodman of the World Life Ins. Soc., 228 S.C. 340, 90 S.E.2d 212 (1955); Craig v. Bell, 211 S.C. 473, 46 S.E.2d 52 (1948). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the legislation. Hay v. S.C. Tax Comm., 270 S.C. 269, 255 S.E.2d 837 (1979). Remedial statutes, the purpose of which is to promote public safety and welfare are to be given a more liberal construction. S.C. Op. Atty. Gen. No. 83-96, see also McKenzie v. People's

Baking Co., 205 S.C. 149, 21 S.E.2d 154 (1944). Further, the South Carolina Supreme Court has stated that statutes regarding children are entitled to "favorable and liberal construction." State v. Cagle, 111 S.C. 548, 96 S.E. 291 (1918).

Act 301 has been referred to as "Jacob's Law" and appears to have come into existence as the result of a fatal accident involving a 15-passenger van and a tractor-trailer. 6-year-old Jacob Strebler was killed in July of 1994 when the van he was riding in as part of a Heathwood Hall Episcopal School summer program was struck by a large tanker truck. The 15-passenger van was found to lack the structural protections for its occupants that a "school bus" meeting mandated federal safety standards has.

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.

Other factors surrounding the passage of the Act also support such a reading. The original language of the Act 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 ~~public~~ 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) ~~Every State-owned~~ A school bus while being used in the transportation of school pupils ~~shall~~ must be substantially painted with high visibility yellow paint, conforming and similar to National School Bus chrome yellow, and ~~shall~~ 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.

Obviously, as originally drafted, the Act was to apply only to public and private schools in the transportation of students. As eventually passed, however, the Act 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.

On-the-other-hand, certain factors can lend themselves to a more narrow interpretation of the statute which would make it inapplicable to the activities of the City of Aiken. As mentioned above, statutes which are part of the same act are in pari materia and must be read together. In this case, § 56-5-195 applies to entities transporting students to or from school, school-related activities or daycare. Section 56-5-196 (Section 2 of Act 301) provides that parents have the option to designate a "child daycare center or other before or after school program as the student's origin or destination for school transportation." Reading the two sections together could lend itself to the following interpretation: 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. This type of reading would apparently exclude the described activities of the City of Aiken.

Further, §2-7-72 requires that fiscal impact statements be included in new legislation whenever a bill is introduced requiring the expenditure of state funds. Also, §2-7-76 similarly requires fiscal impact statements to be included in legislation when counties or municipalities are required to spend certain funds. Act 301 includes the following, "Statement of Estimated Fiscal Impact" approved by Don Addy, Office of State Budget:

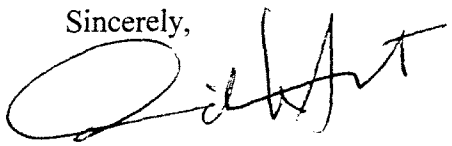
> The State Department of Education (SDE) indicates enactment of this bill would have no impact on the General Fund of the State, nor on federal and/or other funds. SDE already provides that all school buses purchased meet federal school bus safety standards.

No such fiscal impact statement is included with reference to counties and municipalities. It would appear that the drafter(s)of the Act felt that the provisions could require an expenditure of state funds on new school buses. It would further appear that there was no such feeling with regards to counties or municipalities. This would indicate that, perhaps, the Act was not intended to speak to municipalities transporting children, such as the City of Aiken.

After review of the Act, its limited history and the rules of statutory interpretation, it is apparent that there are ambiguities in the statute and that good arguments could be made for both interpretations outlined above. While remedial statutes are generally applied broadly so as to effect the intent of the General Assembly, such interpretations would not be unlimited. However, as evinced by the opinions of both the SCMA and the SCRAP, a broad reading of the Act 301which would cover the relevant activities of the City of Aiken is not out of the question. Therefore, the only opinion I can render is that the statutes' ambiguities give rise to the need for legislative or judicial clarification.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

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