



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
 ATTORNEY GENERAL

March 25, 1997

The Honorable Lee S. Alford
 Family Court Judge for the
 Sixteenth Judicial Circuit
 1070 Heckle Boulevard
 Rock Hill, South Carolina 29731

Re: Informal Opinion

Dear Judge Alford:

You have asked our interpretation "as to which court has jurisdiction to enforce title 59 section 65-20 of the 1976 Code of Laws of South Carolina, as amended." You inquire whether "this [is] a criminal statute which requires a criminal warrant and prosecution in magistrate or general sessions court or may jurisdiction be exercised by the family court?" You further state that "Title 59 sections 65-50 through 65-70 provides for what appears to be a civil procedure in family court as an alternative to section 65-20." You ask whether this Office agrees with you "that family courts have jurisdiction to enforce sections 65-50 through 65-70?" Finally, you state that you would

... also appreciate [an] opinion as to whether the provisions of sections 65-50 through 65-70 preclude an order being issued to parents for mandatory attendance by the family court and enforcement of that order by the standard civil contempt powers of up to one year in jail and a fifteen hundred (\$1500.00) dollar fine.

LAW / ANALYSIS

S.C. Code Ann. Sec. 59-65-10 et seq. codifies South Carolina's compulsory school attendance law. Section 59-65-10 (A) mandates that "[a]ll parents or guardians shall cause their children or wards to attend regularly a public or private school or kindergarten of

their State which has been approved by the State Board of Education or a member school of the South Carolina Independent School's Association or some similar organization, or a parochial, denominational, or church-related school, or other programs which have been approved by the State Board of Education from the school year in which the child or ward is five years of age before September first until the child or ward attains his seventeenth birthday or graduates from high school." Pursuant to Section 59-65-20, "[a]ny parent or guardian who neglects to enroll his child or ward or refuses to make such child or ward attend a school shall, upon conviction, be fined not more than fifty dollars or be imprisoned not more than thirty days" Each day's absence constitutes a separate offense. Certain exceptions are contained in Section 59-65-30.

Section 59-65-50 provides that if the board of trustees of a school district or its designee is unable to obtain the school attendance of a child in the age group specified in Section 59-65-10,

the board or its designee shall report such nonattendance in writing to the juvenile court or such other court in the county as may have jurisdiction of juveniles but exclusive of magistrate's courts notwithstanding the provisions of Section 22-3-540; provided, that no one except the board of trustees or its designee shall have the authority to institute the proceedings herein.

Furthermore, Section 59-65-60 states that

(a) Upon receipt of such report, the court may forthwith order the appearance before such court of the responsible parent or guardian and if it deems necessary, the minor involved, for such action as the court may deem necessary to carry out the provisions of this article.

(b) The court may, after hearing upon ten days notice, order such parent or guardian to require such child to attend school and upon failure of such parent to comply with such order may punish such parent or guardian as by contempt, provided, that punishment for such contempt cannot exceed fifty dollars or thirty days imprisonment for each offense.

The procedure herein provided shall be alternative to the penalties provided in Section 59-65-20.

(emphasis added). Finally, Section 59-65-70 reads as follows:

[i]f the court determines that the reported absence occurred without the knowledge, consent or connivance of the responsible parent or guardian or that a bona fide attempt has been made to control and keep the child in school, the court may declare such child to be a delinquent and subject to the provisions of law in such cases.

In an Opinion dated May 28, 1980, we addressed your questions generally. Therein, we referenced an earlier opinion of October 30, 1972. In the 1980 Opinion, we noted that the 1972 Opinion

makes clear that the Family Court has jurisdiction [pursuant to Sections 59-65-50 and 59-65-60] to order a parent or guardian to require that a child attend school and hold the parent in contempt for failure to comply with the order. ... It also notes the availability of a separate proceeding in the Magistrates' Court against a parent or guardian for failure to enroll or failure to cause the child to attend school.

The 1972 Opinion further emphasized the difference between the criminal proceeding in Magistrate's Court and the contempt proceeding in Family Court this way:

... the Compulsory Attendance Law itself provides for two alternative procedures for enforcing compliance with this law. The first is a proceeding in the Magistrate's Court against a parent or guardian for failure to enroll or failure to cause the child to attend school. [Referencing what is now Section 59-65-20]. The second is a contempt proceeding in a court with Jurisdiction over minors against the parent or guardian for failure to require unattending children to attend under a court order. [Referencing Section 59-65-50 and -60].

A third Opinion, Op.No. 79-114 (September 19, 1979) again referenced the various procedures thusly:

The Legislature has provided that the State may proceed against the child in the Family Court under some form of a delinquency proceeding, and, has alternatively provided, that

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the State may also proceed criminally against the parent or guardian under Section 59-65-20; or it may proceed civilly against the parent or guardian under the contempt procedure provided for in Section 59-65-60.

As to your question regarding which statute governs in terms of the sanctions for contempt, the May 28, 1980 Opinion answers this question. Such Opinion concludes that the Compulsory School Attendance law is controlling over Section 14-21-650 which gives the Family Court general contempt powers to punish by fine not to exceed one year and/or one year in prison. The 1980 Opinion concluded that the provisions of Section 59-65-60 "must be read as a limitation on the general discretion of Family Courts to impose greater penalties for the violation of their orders." The Opinion referenced the general rule of statutory construction that a specific statute will usually prevail over a more general one. While I do not like the result reached on this point in the 1980 Opinion, I can not argue with the reasoning therein and it would be a matter for the General Assembly to change the statute.

In summary, Section 59-65-20 provides for criminal penalties "against a parent or guardian for failure to enroll or failure to cause the child to attend school." Jurisdiction of such criminal offense would be in Magistrate's Court. Sections 59-65-50 and -60 provides for a contempt proceeding "... against the parent or guardian for failure to require unattending children to attend under a court order." Jurisdiction for such proceedings lies in the Family Court. The penalties contained in Section 59-65-60 would exclusively govern unless and until the General Assembly changes the statute.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General