6521 Library

The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

June 22, 1998

The Honorable Mike Fair
Senator, District No. 6
P. O. Box 14632
Greenville, South Carolina 29610

Re: Informal Opinion

Dear Senator Fair::

You seek an opinion of this Office as to whether public libraries and public school libraries fall in the same category as college libraries with respect to the law dealing with distributing offensive or harmful material to minors.

Law / Analysis

S.C. Code Ann. Sec. 16-15-385 provides in pertinent part:

> (A) A person commits the offense of disseminating harmful material to minors if, knowing the character or content of the material, he
>
> > (1) sells, furnishes, presents, or distributes to a minor material that is harmful to minors; or
> >
> > (2) allows a minor to review or peruse material that is harmful to minors.
>
> A person does not commit an offense under this subsection when he employs a minor to work in a theater if the minor's parent or guardian consents to the employment

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Request Letter

> and if the minor is not allowed in the viewing area when material harmful to minors is shown.

Section 16-15-375(1) defines the term "harmful to minors." Such Subsection states:

> (1) "Harmful to minors" means that quality of any materials or performance that depicts sexually explicit nudity or sexual activity and that, taken as a whole, has the following characteristics:
>
> > (a) the average adult person applying contemporary standards would find that the material or performance has a predominant tendency to appeal to prurient interest of minors in sex; and
> >
> > (b) the average adult person applying contemporary community standards would find that the depiction of sexually explicit nudity or sexual activity in the material or performance is patently offensive to prevailing standards in the adult community concerning what is suitable for minors;
> >
> > and
> >
> > (c) to a reasonable person, the material or performance taken as a whole lacks serious literary, artistic, political or scientific value for minors.

Section 16-15-375(5) defines "sexual activity." "Sexually explicit nudity" is defined by Section 16-15-375(6). Section 16-15-385(C)(2) provides as follows:

> [e]xcept as provided in item (3) of this subsection, mistake of age is not a defense to a prosecution under this section. It is an affirmative defense under this section that
>
> ...
>
> (2) the defendant was a school, church, museum, public, school, college or university library, government agency, medical clinic, or hospital carrying out its legitimate functions, or an employee or agent of

> such an organization acting in that capacity and carrying out a legitimate duty of his employment.

Subsection (D) makes this offense a felony, and upon conviction a violation thereof must be imprisoned for not more than five years or fined more than five thousand dollars, or both.

The issue which you raise in your letter is whether public libraries and public school libraries fall in the same category as college or university libraries for purposes of the affirmative defense provided in § 16-15-385(C)(2). In other words, is it an affirmative defense under the "Harmful to Minors" statute that the defendant was a public library or public school library?

My reading of this provision is that public libraries and public school libraries are placed in precisely the same legal position as college and university libraries for purposes of § 16-15-385(C)(2). The statute provides both public libraries and public school libraries an affirmative defense where either of these entities is "carrying out its legitimate function, or an employee or agent of such an organization [is] acting in that capacity and carrying out a legitimate duty of his employment."

A number of principles of statutory construction are important in resolving your inquiry. First and foremost, in interpreting a statute, the primary purpose is to ascertain the intent of the General Assembly. State v. Martin, 253 S.C. 46, 358 S.E.2d 697 (1987). An enactment should be given a reasonable and practical construction, consistent with the purpose and policy expressed in the statute. Hay v. S.C. Tax Commn., 273 S.C. 269, 255 S.E.2d 837 (1979). Words used therein should be given their plain and ordinary meaning. First South Sav. Bank, Inc. v. Gold Coast Associates, 301 S.C. 158, 390 S.E.2d 486 (Ct. App. 1990).

Moreover, the full effect must be given to each part of the statute, and in the absence of ambiguity, words must not be added or taken from the statute. Home Building & Loan Assn. v. City of Sptg., 185 S.C. 313, 194 S.E. 139 (1938). An absurd result is to be avoided, Powell v. Red Carpet Lounge, 280 S.C. 142, 311 S.E.2d 719 (1984), as is any interpretation which would render parts of a statute as mere surplusage. Bruner v. Smith, 188 S.C. 75, 198 S.E. 184 (1938). In addition, ordinary rules of grammar may be used for interpretation. Op. Atty. Gen., May 22, 1984.

It is evident from the form in which the statute is written, that public libraries and school libraries are to be included within the scope of § 16-15-385(C)(2). The only way the provision makes any sense is to read the words "public," "school," "college" and

"university" as all modifying the term "library." Any other reading would have the term "public" standing alone as a separate entity, which is an unreasonable interpretation.

A similarly worded statute in New York has been interpreted to include public libraries. In Matter of Quad/Graphics, Inc. v. Southern Adirondack Library System, 664 N.Y.S.2d 225 (1997), the Court construed a statute which required that the records which contain names or other personally identifying details regarding the users of "public, free association, school, college and university libraries ..." confidential. The Court ruled that the statute applied to the Saratoga Springs Public Library.

In summary, it is my opinion that the General Assembly has, in § 16-15-385(C)(2), expressly included public libraries and school libraries and that the statute treats these libraries the same as college or university libraries.

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

RDC/an