



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 14, 1995

The Honorable Joe Wilson
Senator, District No. 23
Post Office Box 5709
West Columbia, South Carolina 29171

RE: Informal Opinion

Dear Senator Wilson:

By your letter of July 27, 1995, to Attorney General Condon, you have sought an opinion as to whether Act No. 54 of 1995 (S.46, R-93) would apply to the following situation. The Act imposes fingerprint reviews and background checks on persons who would be operators, employees, or caregivers at day care centers, as more fully described in the Act and other relevant legislation. Your question is whether the Act applies to a church organization that operates a program commonly called "Mothers Morning Out" on a strictly part-time basis, staffed by women of the church, operated only occasionally (once a month or perhaps once a week), for three or so hours at a time. You have asked whether the women of the church, who volunteer for the program on a rotating basis, would be required to undergo the fingerprint check.

Licensure or registration of child day care centers or group day care homes operated by church congregations or established religious denominations or religious colleges or universities, as stated more fully in S.C. Code Ann. §20-7-2900, is governed by §20-7-2900 et seq. Section 20-7-2900 was amended by Act No. 54 of 1995 and now provides in relevant part as to your inquiry:

(A) No church congregation or established religious denomination or religious college or university which does not receive state or federal financial assistance for day care services may operate a child day care center or group day care home unless it complies with the requirements for

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registration and inspection and the regulations for health and safety as set forth in Sections 20-7-2910 through 20-7-2970. Registration expires at the end of one year from the date of issuance of the statement of registration. Registration may be renewed according to the procedures developed by the department.

(B) No license or registration may be issued to a church congregation, established religious denomination, or religious college or university if a person who provides service as an operator, caregiver, or employee at the child care facility has been convicted of: [a crime as specified in the statute].

(C) No facility may employ or engage the services of an operator or any person who has been convicted of one of the crimes listed in this section.

* * * *

(F) A person applying for a license or registration as an operator of a church or religious day care center or seeking employment or seeking to provide caregiver services at a church or religious day care center shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint reviews required by this subsection are not required upon each renewal unless the renewal coincides with employment of a new operator, employee, or caregiver.

* * * *

Many of the terms found in newly-amended §20-7-2900 are defined in §20-7-2700. It is necessary to review those definitions and apply them to the facts as stated above, to determine whether the requirements of §20-7-2900 apply to the situation you have raised.

Subsection A of §20-7-2900 concerns the operation of a child day care center or group day care home by one of the specified church-related entities. A "child day care center" is defined by §20-7-2700 (e) as "any facility which regularly receives thirteen or more children for day care." The phrase "group day care home is defined in §20-7-2700 (f) as

any facility, generally within a dwelling unit, which regularly provides child day care for at least seven but not more than twelve children, unattended by a parent or a legal guardian, including those children living in the home and children received for day care who are related to the resident caregiver. ...

The term "day care" is defined by §20-7-2700 (a) as

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the care, supervision or guidance of a child or children, unaccompanied by the parent, guardian or custodian, on a regular basis, for periods of less than twenty-four hours per day, but more than four hours, in a place other than the child's or children's own home or homes.

The term "regular" or "on a regular basis" is defined by §20-7-2700 (n) to "refer to the frequency with which child day care services are available and provided at a facility in any one week; these terms mean the availability and provision of periods of day care on more than two days in such week."

Most of these definitions contain the term "facility,"¹ which is defined by §20-7-2700 (b) as

any facility which provides care, supervision or guidance for any minor child who is not related by blood, marriage or adoption to the owner or operator of such a facility whether or not the facility is operated for profit and whether or not the facility makes a charge for services offered by it. This definition includes, but is not limited to, day nurseries, nursery schools, day care centers, group day care homes and family day care homes.

Then follows a list of programs or facilities which are excluded from the definition. Of importance to your question is exclusion (3): "kindergartens or nursery schools or other daytime programs, with or without stated educational purposes, operating no more than four hours a day and receiving children younger than lawful school age."

Applying the foregoing definitions to the situation described in your letter, I observe that the "Mothers Morning Out" program does not appear to meet the definition of "child day care center" or "group day care home." The program which you have described does not operate on a regular basis, as the term "regular" is defined; it does not appear to operate for more than four hours at a time, thus falling outside the definition of "child day care." In addition, the program would appear to fall within exclusion (3) of the definition of "child day care facility" in §20-7-2700 (b).

Because the "Mothers Morning Out" program of a church organization, as described above, does not appear to meet the definitions outlined above, I am of the opinion that the women of the church who volunteer for the program are not required to undergo the fingerprint checks that are required by newly-amended §20-7-2900, a part of Act No. 54

¹The term actually defined in §20-7-2700 (b) is "child day care facilities."

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of 1995. Because each program would be unique in its hours of operation and number of days of operation per week, my opinion is limited to the "Mothers Morning Out" program as described above. In reaching my conclusion, I am mindful of the purposes served by Act No. 54 of 1995, to prevent harm to the State's children in day care facilities. I would encourage the church organization to take reasonable steps to ensure the safety of the children in its care even though the terms of the Act do not apply to the program under consideration herein.

This letter is an informal opinion only. It has been written by a designated Senior Assistant 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. I trust that the foregoing has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General