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Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-8687

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-8687

March 25, 1985

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Opinion No 85-27
892

The Honorable Charles D. Barnett
Commissioner
South Carolina Department of
Mental Retardation
Post Office Box 4706
Columbia, South Carolina 29240

Re: January 7, 1985 Request for Attorney General's Opinion on "three-quarter mile" Restriction in §44-7-520B(1)

Dear Commissioner Barnett:

You have asked for clarification of the above referenced restriction in two particulars: (1) the manner of measurement of the "three-quarter mile" distance and, (2) the application of the restriction across the borders of incorporated and unincorporated areas. This Office also received correspondence and documents from your General Counsel, James R. Hill, Jr., and I discussed these matters with him during the week of February 11th.

> (1) "How is the 'three-quarter mile' limitation determined? Is it considered the radius of a circle ('as the crow flies') or is it determined by some other method such as the closest, most reasonably accessible route between facilities?

The case law interpreting statutory restrictions on the permissible distances between establishments of certain types deals with liquor licensing. Those cases discovered by our research are in agreement with the rule as stated in 45 Am. Jur. 2d Intoxicating Liquors §144, "Measurement and Computation of Distance," 96 A.L.R. 775 at 778, 4 A.L.R. 3d 1250 at 1252, and the cases cited therein.

> It is a rule of law that, except as may be otherwise specifically provided [by the language of the statute], the distance contemplated by a statute

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or regulation prohibiting the granting of license of license for the sale of intoxicating liquors, or traffic or traffic therein, within a certain distance of a named of a named institution or place, must be measured along the shortest straight line, rather than in some other some other manner, such as by the usually traveled route or street lines 45 Am. Jur. 2d Intoxicating Liquors §144. §144.

This "rule" is not only universal in the cases but is in accord with the "plain meaning" of the language of the statute, i.e., "within three-quarters of a mile from another facility." See, e.g., Evans v. United States, 261 F. 902, 904 (1919). There are a number of cases measuring distances by the most accessible route or along streets, but all of these involve statutes where this manner of measurement is expressly provided by the language of the statute. See, e.g., Smith v. Pratt, 258 S.C. 504, 189 S.E. 2d 301, at 303 (1972) referring to the current §61-3-440 of the Code of Laws of South Carolina, 1976, which prohibits granting liquor licenses within "three hundred feet of a church..., the distance to be computed by the shortest route of ordinary travel along the public thoroughfare." (Emphasis added.)

The fact that the South Carolina Legislature expressly provides for that method of computation in Section 61-3-440, and is silent in Section 44-7-520B.(1), also supports the interpretation requiring straight line measurement in applying the later section. The Legislature is presumed to avoid verbose, redundant or meaningless phrases. Consequently, specifying a particular manner of measurement in one statute would indicate that, in the absence of that particular specification, another manner of measurement would be implied. The silence regarding the manner of measurement in Section 44-7-520B(1) would indicate that the manner of measurement would be something other than that "shortest ordinary route" manner, which does require specific expression.

It is thus reasonably free from doubt that Section 44-7-520B(1) means, and the Legislature intended it to mean, that the "three-quarter mile" distance is to be computed in the shortest straight line, "as the crow flies" or by the radius of a circle.

(2) How does the "three-quarter mile" limitation apply to a situation where an unincorporated area without zoning abuts an incorporated area? As an example, how does the three-quarter mile limitation apply, if at all, to a situation where a community residential care facility is located within a city but

> close to the boundary line and another facility is proposed outside the city limits in an unincorporated area yet within three-quarters miles of the facility within the city limits?

Section 44-7-510 of the Code, as amended, defines "community residential care facility." Section 44-7-520A provides that "[n]o community residential care facility as defined in Section 44-7-510 may be operated unless a license is first obtained from [DHEC] as provided in this article." Section 44-7-520B sets forth prerequisites for licensing for community care facilities outside of incorporated areas. Section 44-7-520B.1. states that "[t]he facility may not be located within three-quarters of a mile from another facility."

The definition of community care facility includes all such facilities without any distinction between those in incorporated and unincorporated areas. Although Section 44-7-520.B. refers to prerequisites for licensing of only facilities in unincorporated areas, neither it nor the rest of Chapter 7 of Title 44 make any other distinction between facilities in incorporated or unincorporated areas. Consequently the reference in subsection B(1) to "another facility" is unambiguous and "the plain meaning" rule of statutory construction would require that "another facility" would mean any such facility as defined in Section 44-7-510, whether in an incorporated or unincorporated area. Since no language in Chapter 7 of Title 44 creates any ambiguity regarding the meaning of "another facility," "the plain meaning rule" must be applied and no resort to further rules of statutory construction would be appropriate.

> One of the primary rules in the construction of a statute is that the words used therein should be taken in their ordinary and popular significance unless there is something in the statute requiring a different interpretation. Brewer v. Brewer, 242 S.C. 9, 129 S.E. 2d 736 (1963). There is no safer nor better rule of interpretation than that when language is clear and unambiguous it must be held to mean what it plainly says. James v. South Carolina State Highway Department, 247 S.C. 137, 146 S.E. 2d 166 (1966).

Nor do any indications of legislative intent contradict the ordinary meaning of "another facility" in connection with the definition in Section 44-7-510. The confusion regarding subsection B(1) results from the limitation of its application to facilities seeking a license in an unincorporated area. Any rational basis for distinguishing incorporated areas from unincorporated areas

regarding proximity restrictions would appear to derive from the more compact, crowded, urbanized, nature of the former, in general, versus the more spread out, less crowded, rural nature of the latter, in general. The Legislature's intent appears to be to prevent the clustering of facilities within those areas which are generally more rural. There is no indication that this interest would be abrogated or diminished because the closest other facility happened to be inside corporate limits. To so indicate, the Legislature merely would have added "in an unincorporated area" after "another facility" as a modifier.

Obviously, this "plain meaning" interpretation may lead to anomalous results. A facility in an incorporated area could obtain a license less than three-quarters of a mile from a facility in an unincorporated area, but not vice-versa. Even where the unincorporated facility opened first and obtained a license, a late coming facility in an incorporated area could still obtain a license. Subsequently, when the facility in an unincorporated area comes up for relicensing after a year, it could not be relicensed because another facility would now be licensed within three-quarters of a mile.

However, there is no language or other indication which would allow a different interpretation. Nor are any of the exceptions to the plain meaning rule present. Again, literalism would not conflict with whatever is evident about the purpose of the statute in general or the restriction in particular, nor are the words sufficiently flexible to permit another construction. Compare, Beaty v. Richardson, 56 S.C. 173, 34 S.E. 73 (1899); Abell v. Bell, 229 S.C. 1, 91 S.E. 2d 548 (1956). There is no indication that the omission of the necessary modification "in an unincorporated area" which does not follow "another facility" was omitted through clerical error. Compare, Cain v. S.C. Public Service Authority, 222 S.C. 200, 72 S.E. 2d 177 (1952) and Waring v. Cheraw and Darlington R.R. Co., 16 S.C. 416 (1882). Literalism would not make the statute meaningless or futile. Compare, Fulgham v. Bleekley, 177 S.C. 286, 181 S.E. 30 (1935). There is no other provision or statute with which Section 44-7-520B.(1). would conflict if interpreted literally. Compare, Adams v. Clarendon County School District No. 2, 270 S.C. 266, 241 S.E. 2d 897 (1978), and Jolly v. Atlantic Greyhound Corp., 207 S.C. 1, 35 S.E. 2d 42 (1945). Finally, the potential anomalous result described above does not arise to the level, or the kind, of absurdity or irrationality which can give rise to an exception if there is another possible reading of the statute (which there does not appear to be in this situation, in any case). Compare, State Board of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E. 2d 644 (1946). The Legislature has the right to address certain evils or problems and not others which are similar, or to address said evils or problems in one type of

geographical area without addressing them in other areas. In short, it may draw the line somewhere, without necessarily including or excluding all similar situations. Furthermore, "[i]t is not enough merely that hardy and objectionable or absurd consequences, which probably were not within the contemplation of the framers, are produced by an act of legislation. [I]n such case the remedy lies with the law making authority, and not with the courts." Crooks v. Harrelson, 282 U.S. 55, 60 (1930).

It appears that a facility in an unincorporated area may not be licensed if it is within three-quarters of a mile of another facility, even if the other facility is in an incorporated area.

I hope this letter has provided the clarification you require. Should you have any further questions please don't hesitate to contact me at 758-8667.

Sincerely,

James W. Rion
Assistant Attorney General

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REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions