1984 WL 249964 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 16, 1984

***1** The Honorable Charlie G. Williams
State Superintendent of Education
South Carolina Department of Education
Rutledge Building
1429 Senate Street
Columbia, South Carolina 29201

The Honorable James L. Solomon, Jr.
Commissioner
South Carolina Department of Social Services
Post Office Box 1520
Columbia, South Carolina 29202-9988

Dear Dr. Williams and Dr. Solomon:
You have both made separate requests for opinions concerning the relationship between Section 20-7-2700 of the Code of Laws of South Carolina (1976), as amended, and a section of the Education Improvement Act, Act 512, Part II, Division II, Subdivision B, Sub-Part 3. The former section provides for the licensing of certain child care facilities by the Department of Social Services (DSS). The Education Improvement Act provides for the State Board of Education's adoption of regulations providing for '. . . early childhood development programs for four year old children . . ..' Under current proposals, these programs would be operated for two 2.5 hour sessions per day with different children attending each session. You apparently do not question that these programs would otherwise constitute child day care facilities under the DSS law unless excepted from its requirements because of the length of its sessions. See, Section 20-7-2700(g). Because the DSS law applies only to care exceeding four (4) hours in length, at issue here is whether the sessions should be viewed as 2.5 or 5 hour programs under the DSS law. See, Sections 20-7-2700(a) and (b). The DSS law expressly exempts '. . . programs . . . operating no more than 4 hours a day . . ..' Section 20-7-2700(b)(3).

The statutory definitions of 'child day care' and 'child day care facilities' are helpful in resolving this question. 'Child day care' is defined, in part, to mean the care, etc. of children '. . . for periods of . . . more than four hours . . . (emphasis added).' This reference to periods of more than four hours a day indicates that the 2.5 hour sessions might be considered as separate periods so as to fall outside the scope of the regulated day care. This emphasis on the time per child rather than total operating time of a facility is further supported by the definition of 'child day care facilities' in terms of care '. . . for any minor child . . ..' This interpretation also supports application of sub-paragraph (3) exclusion to each 2.5 hour session as a separate 'program.' [1] Cf. Section 20-7-2700(b)(4) and (5). [2] The sub-paragraph (3) exclusion may have been intended to emphasize the inapplicability of the licensing law to the care of children for less than four hours a day. See also sub-paragraphs 4 and 5.

This matter is not free from doubt because of the absence of express guidance in the statute. Public facilities are not exempt from DSS regulations (see Sections 20-7-2700(c) and 20-7-2790, et seq.) and the Education Improvement Act contains no express exclusion as to the DSS law; however, the fact that 2.5 hour sessions are operated twice daily would not alone appear to cause the programs of any provider to count as five total hours so as to subject them to DSS regulations. We have not reviewed the proposed regulations and express no opinion as to whether the addition of other factors might make the sessions count as a five

(5) hour program. These conclusions do not appear to be altered by provisions for Child Development in the Department of Education's section of the Appropriations Act. Act 512, Part I, Section 28, 1984.

***2** In conclusion, subject to the cautions expressed above, the fact that the 2.5 hour sessions would be operated twice daily would not alone appear to make the programs a five (5) hour operation subject to DSS regulations when different groups of children would attend the sessions; however, because of the absence of express guidance, this matter cannot be resolved with certainty absent a declaratory judgment or legislative action.

If we may be of other assistance, please let us know.
Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

1 'Program' is not defined in the statute which makes its scope uncertain. Sub-paragraphs 4 and 5 also do not give clear assistance as to how sub-paragraph (3) should be interpreted.

2 Section 20-7-2700(b)(5) arguably supports a contrary view of these laws in that it specifically exempts shopping center facilities operating for more than four (4) hours but caring for the same children for less than four (4) hours per day. The argument might be made that this exception would be unnecessary if the licensing laws generally excluded care per child of less than four (4) hours per day; however, the special nature of those facilities may have been the reason for making them the subject of a specific exception. Moreover, the focus on the amount of care per child in paragraph (5) is consistent with interpretating these laws as generally addressing the care per child.

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