

1982 WL 189400 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 12, 1982

*1 Ms. Barbara Waugh
South Carolina Board of Occupational Therapy
4633 Fernwood Road
Columbia, South Carolina

Dear Ms. Waugh:

You have asked the opinion of this office as to the meaning of [§ 40-36-50 of the Code of Laws of South Carolina](#) (1976, as amended) which states in pertinent part:

A limited permit may be granted to persons who have completed the education and experience requirements of this chapter but not the examination. The permit shall allow him to practice occupational therapy under the direct supervision of a licensed occupational therapist present on the premises. (emphasis added).

You have specifically inquired as to the construction to be given the phrase 'present on the premises', particularly as the phrase applies to the situation where a person possessing a limited permit is required or requested to provide occupational therapy services in the home.

It is well settled that, with respect to the interpretation and construction of statutes, one must give effect to the intention of the Legislature; that which is not within the manifest intention of the General Assembly cannot be read into the statute. [Belk v. Nationwide Mut. Ins. Co.](#), 271 S.C. 24, 27, 244 S.E.2d 744 (1978). Where there exist two possible constructions of a statute, the one which effectuates rather than defeats the legislative purpose should be adopted. [Beaufort Co. v. Jasper Co.](#), 220 S.C. 469, 479, 68 S.E.2d 421 (1951). Consistent with the purpose and policy of the General Assembly as expressed in the statute, the enactment should be given only a reasonable construction. [Hay v. South Carolina Tax Commission](#), 273 S.C. 269, 273, 255 S.E.2d 837 (1979). In short, no statute should be given a construction which is absurd. [Stephens v. Hendricks](#), 226 S.C. 79, 93, 83 S.E.2d 634 (1954). The words used in the enactment should be given their plain and ordinary meaning, [Worthington v. Belcher](#), 274 S.C. 366, 264 S.E.2d 148 (1980); phrases may not be added or taken away in the absence of any ambiguity. [Hartford Acc. and Indemnity Co. v. Lindsay](#), 273 S.C. 79, 85, 254 S.E.2d 301 (1979).

When these principles are applied to the construction of [§ 40-36-50](#), it is inescapable that one possessing a limited permit to practice occupational therapy may not so practice unless a licensed occupational therapist is present 'on the premises', i.e., is immediately available in proximity to the limited permittee, wherever he may be practicing. The language employed in [§ 40-36-50](#) is unambiguous and the legislative purpose underlying the provision is readily apparent. The statute is drafted so that a licensed occupational therapist directly oversees the work of the limited permittee, who, of course, has not yet completed all the statutory requirements for licensure to practice occupational therapy in South Carolina. To effectuate this direct supervision and better insure the safety and welfare of the patient, [§ 40-36-50](#) further requires that the supervising therapist be immediately available to and near the limited permittee, should any problems arise in the course of treatment, by mandating that the licensed therapist be 'present on the premises.'

*2 This purpose expressed in unequivocal terms, would be easily defeated if [§ 40-36-50](#) were construed as not requiring the presence of a licensed therapist near the place where the permittee is practicing merely because the treatment site is a home rather than a hospital. There is absolutely nothing suggested in the statute which would distinguish these places of treatment; therefore, the literal language, together with the legislative intent, would be rendered meaningless by such an interpretation. In

other words, there is nothing here to indicate or in any way suggest that the phrase 'present on the premises' is not meant to include the home, as well as a hospital or medical facility.¹

The phrase as used in § 40-36-50 clearly requires the presence of a licensed occupational therapist wherever the limited permittee may be practicing occupational therapy.

Very truly yours,

Robert D. Cook
Assistant Attorney General

Footnotes

- ¹ I have been unable to locate any case dealing with the construction of a similar statute as used in this context. However, this office, in a previous opinion, issued December 18, 1981 and attached hereto, concluded, in a somewhat similar context, that the phrase 'on his premises' must be read literally. The conclusion reached here is further supported by the fact that the word 'premises' is particularly broad in scope, [State v. Myers](#), (Mo.), 147 S.W.2d 444, 447 (1941) and is not confined to a particular location; the meaning of the word depends upon the particular context and circumstances in which it is used. [Gibbons v. Brandt](#), 170 F.2d 385, 387 (7th Cir., 1948); [Treasure Island Catering Co. v. State Bd. of Equalization](#), (Cal.), 120 P.2d 1, 3 (1941).

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