ALAN WILSON
ATTORNEY GENERAL

January 11, 2016

The Honorable Michael Crenshaw, Sheriff
Oconee County Sheriff's Office
415 South Pine Street
Walhalla, SC 29691

Dear Sheriff Crenshaw:

Attorney General Alan Wilson has referred your letter dated August 18, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter)**:**
I am requesting an opinion from your office in regards to the wording and definition in the state statute for persons required to report, [S.C. Code §] *63-7-310. The statute reads as follows:*

> *(A) A physician, nurse, dentist, optometrist, medical examiner, or coroner, or an employee of a county medical examiner's or coroner's office, or any other medical, emergency medical services, mental health, or allied health professional, member of the clergy including a Christian Science Practitioner or religious healer, school teacher, counselor, principal, assistant principal, school attendance officer, social or public assistance worker, substance abuse treatment staff, or childcare worker in a childcare center or foster care facility, foster parent, police or law enforcement officer, juvenile justice worker, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, judge, or a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA must report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child has been or may be abused or neglected as defined in Section 63-7-20.*
>
> [(B) If a person required to report pursuant to subsection (A) has received information in the person's professional capacity which gives the person reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by acts or omissions that would be child abuse or neglect if committed by a parent, guardian, or other person responsible for the child's welfare, but the reporter believes that the act or omission was committed by a person other than the parent, guardian, or other person responsible for the child's welfare, the reporter must make a report to the appropriate law enforcement agency.

> (C) Except as provided in subsection (A), a person, including, but not limited to, a volunteer non-attorney guardian ad litem serving on behalf of the South Carolina Guardian Ad Litem Program or on behalf of Richland County CASA, who has reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse and neglect may report, and is encouraged to report, in accordance with this section.
>
> (D) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found.]

My question is in reference to the mandated reporting. Are the persons listed required to report when they are not physically at their professional office? For example, a teacher or principal of a school out for summer break, are they still mandated reporters? Another example, a doctor who is home and not in his office, is he considered a mandated reporter? What constitutes "professional capacity" in regards to the mandated reporters?

Law/Analysis:

This Office issued an opinion in 1990 to a similar question regarding whether the mandatory reporters must report possible abuse or neglect if they learn the information in the context of their private lives when they are not within the scope of their job. See Op. S.C. Att'y Gen., 1990 WL 599312 (June 22, 1990). In that opinion this Office concluded the Legislative intent and the statutory interpretation both led to the conclusion that the mandatory reporters must report all suspected child abuse and neglect at all times, even outside the scope of their employment. Id. However, in 1996 the South Carolina Legislature amended South Carolina Code § 20-7-510 (the predecessor to South Carolina Code § 63-7-310) to read:

> (A) A physician, nurse, dentist, optometrist, medical examiner or coroner or an employee of a county medical examiner's or coroner's office or any other medical, emergency medical services, mental health, or allied health professional or Christian Science practitioner, religious healer, school teacher, counselor, principal, assistant principal, social or public assistance worker, substance abuse treatment staff, or child care worker in any day care center or foster care facility, police or law enforcement officer, undertaker, funeral home director or employee of a funeral home or persons responsible for processing of films or any judge shall report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect.
> (B) Except as provided in subsection (A), any other person who has reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse and neglect may report in accordance with this section.
> (C) Reports of child abuse or neglect may be made orally by telephone or otherwise to the county department of social services or to a law enforcement agency in the county where the child resides or is found. Where reports are made pursuant to this section to a law enforcement agency, the law enforcement agency shall notify the county department of social services of the law enforcement's response to the report at the earliest possible time.

> Where a county or contiguous counties have established multicounty child protective services, pursuant to Section 20-7-650, the county department of social services immediately shall transfer reports pursuant to this section to the service.

Act No. 450, 1996 S.C. Acts 2740 (emphasis added). Whereas the language in the 1993 Act stated:

> (A) Any physician, nurse, dentist, optometrist, medical examiner or coroner, or employee of a county medical examiner's or coroner's office, or any other medical, emergency medical services, mental health or allied health professional, Christian Science Practitioner, religious healer, school teacher or counselor, social or public assistance worker, child care worker in any day care center or child caring institution, police or law enforcement officer, undertaker, funeral home director, or employee of a funeral home, or any judge having reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect is required to report in accordance with this section.

Act No. 158, 1993 S.C. Acts 515 (emphasis added). Please note the additional language in subsection (A) of the 1996 amendment: "when in the person's professional capacity the person has received information."[1] Act No. 450, 1996 S.C. Acts 2740. This additional language was also later seen in subsections (A) and (B) of the 1999 amendment where it stated:

> (A) A physician, nurse, ... shall report in accordance with this section when in the person's professional capacity the person has received information which gives the person reason to believe that a child's physical or mental health or welfare has been or may be adversely affected by abuse or neglect.
>
> (B) If a person required to report pursuant to subsection (A) has received information in the person's professional capacity which gives the person reason to believe that a child's physical or mental health or welfare has been or may be adversely affected...

Act No. 104, 1999 S.C. Acts 1091 (emphasis added). South Carolina Code § 20-7-510 was then transferred, along with other sections of the Code relating to children, to the newly created Title 63 (known as "South Carolina Children's Code") in 2008 and became South Carolina Code § 63-7-310. See Act No. 261, 2008 S.C. Acts 3669.

As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be

[1] Other changes were made by Act No. 4614, 1996 S.C. Acts 2740, and there have been numerous amendments to the statute since the 1990 opinion. However, the amended law in 1996 is paramount in answering your question. Moreover, this opinion only highlights some of the applicable statutes and cases, as there are others that may be helpful in answering your question.

interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The main factor concerning statutory construction is the intent of the Legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)).

Therefore, we will not look to other statutes to determine the meaning of the statute in question but will look to a clear and unambiguous meaning. As we stated in a previous opinion concerning this same statute (S.C. Code § 63-7-310):

> *The first place to look in regards to interpreting the statute is to the legislative intent. Title 63 is [] titled as the "Children's Code" and states:*
>
> > *This title shall be liberally construed to the end that families whose unity or well-being is threatened shall be assisted and protected, and restored if possible as secure units of law-abiding members; and that each child coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance and control that will conduce to his welfare and the best interests of the State, and that when he is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which they should have given him.*
>
> *S.C. Code § 63-1-30 (1976 Code, as amended). Additionally, the purpose of protecting children is clearly laid out in plain language by the Legislature in S.C. Code § 63-7-10. It states:*
>
> > *(A) Any intervention by the State into family life on behalf of children must be guided by law, by strong philosophical underpinnings, and by sound professional standards for practice. Child welfare services must be based on these principles:*
> >
> > ...
> >
> > *(B) It is the purpose of this chapter to:*
> > *(1) acknowledge the different intervention needs of families;*
> > *(2) establish an effective system of services throughout the State to safeguard the well-being and development of endangered children and to preserve and stabilize family life, whenever appropriate;*
> > *(3) ensure permanency on a timely basis for children when removal from their homes is necessary;*
> > *(4) establish fair and equitable procedures, compatible with due process of law to intervene in family life with due regard to the safety and welfare of all family members; and*
> > *(5) establish an effective system of protection of children from injury and harm while living in public and private residential agencies and institutions meant to serve them.*
>
> *S.C. Code § 63-7-10 (1976 Code, as amended). A child is defined in Title 63 as "a person under the age of eighteen." S.C. Code §§ 63-1-40(1); 63-7-20(3) (1976 Code, as amended). It seems clear the legislative intent of S.C. Code § 63-7-310 is*

> *to protect children. More specifically, the intent is to protect those children who are or who have been abused by reporting that information to law enforcement. An implication is that children either would not know to report abuse to law enforcement or else they would not be able to do so themselves.*

Op. S.C. Att'y Gen., 2014 WL 3352174 (S.C.A.G. June 30, 2014).

Based on a reasonable interpretation of the South Carolina Code § 63-7-310, it appears the Legislature is attempting to require those people who would come across information within their employment or profession because of their employment to have to report it. Whereas under the previous version of the statute we opined that the individuals listed in the statute were required to report all suspected child abuse and neglect in "any and all circumstances," we believe the Legislative amendments to the statute show the Legislature's intent to require those individuals to report when working within the scope of their professional employment.[2] Op. S.C. Att'y Gen., 1990 WL 599312 (June 22, 1990). As we stated in the 1990 opinion:

> This Office agrees that the statutes appear to have been designed to reach individuals who, in the course of their professions, might be more likely than the general public to obtain and recognize indications of child abuse or neglect. Had the legislature intended to limit the reporting requirement to information obtained only in the course of employment, it could easily have done so as have the legislatures of other states.

Id. The Legislature expressed its intent to limit the duty to information learned within the scope of one's professional capacity by expressly adding the limitation after this Office wrote the 1990 opinion. Act No. 158, 1993 S.C. Acts 515. According to the statute, when one is not within the scope of his profession, he would have no statutory duty to report pursuant to this statute upon finding such information.[3] S.C. Code § 63-7-310.

Moreover, while we will not attempt to diagram subsection (A) of the statute in this opinion, we do believe if you were to diagram it you would see "capacity" is the object of the preposition "in." You would also see it would be diagrammed "in the person's professional capacity" relates to "when" and "the person has received." S.C. Code § 63-7-310 (1976 Code, as amended). Based on the plain reading of "in the person's professional capacity" would not limit them to being physically at their professional office, but would limit them to receiving information while working within the scope of their profession. The statute imposes no duty to report for information obtained outside of the scope of the profession of the mandatory reporters.

In regards to your question of what constitutes receipt of information gained while in one's "professional capacity," a determination must be made on a case-by-case basis. Each scenario would require independent analysis to determine whether the information obtained was received in one's professional capacity. We have stated before regarding this statute that "each case must be judged on its own facts."

---

[2] While we use the terms "employment" and "professional," we recognize some mandatory reporters within the statue include volunteer non-attorney guardian ad litems. We intend to include all those listed in the statute within the scope of their professional capacity as listed in the statute.

[3] Noting all other laws and ethical duties would still be applicable and may impose other duties on these or other individuals.

Op. S.C. Att'y Gen., 2004 WL 113633 (January 7, 2004).[4] For example, a teacher with her class on a field trip to the zoo is still under her statutory duty because information gained would still be within the her professional capacity. In contrast, that same teacher on a personal trip to a store (as the example given in a 2015 South Carolina Lawyer Magazine article) would not gain the information within her professional capacity and thus would not be obligated under this statute. See Shawn D. Eubanks, *See Something, Say Something,* 27 SEP S.C. Lawyer 20 (Sept. 27, 2015). The same standard would apply to your other examples, such as a teacher or principal outside of the scope of their employment on summer break. Nevertheless, that would not prevent the professional from reporting information gained outside of the scope of his or her employment. Your example of the doctor not in his office is more complex in that a doctor outside of the scope of his employment would not have a statutory duty to report pursuant to South Carolina Code § 63-7-310. However, the doctor or other professional may still have other statutory or ethical duties, and those duties and obligations would not be altered by this statute or our interpretation thereof.[5] Our interpretation is consistent with a South Carolina Lawyer Magazine article published in 2015 discussing reporting child abuse. See Shawn D. Eubanks, *See Something, Say Something,* 27 SEP S.C. Lawyer 20 (Sept. 27, 2015). Quoting from that article, it states:

> Another important caveat is that the statute [S.C. Code § 63-7-310] only applies to these individuals when they are receiving the information in their "professional capacity."[6] ... the plain language of the statute dictates that the duty to report is triggered only when the individual receives the information while acting in his or her professional capacity. In other words, if the client isn't working, the statute doesn't require her to take action.

Id. at 22.

Conclusion:

It is for all of the above reasons this Office believes a court would likely determine that mandatory reporting pursuant to South Carolina Code § 63-7-310 does not distinguish physical location as the test but whether the individual listed in the statute is working within the scope of their employment or position enumerated in the statute. Moreover, we want to clarify those professionals listed in the statute may report on credible information gained outside the scope of their employment the same as ordinary citizens. Furthermore, this opinion notes professionals may have other statutory or ethical duties that they must comply with and that our interpretation of this statute would not obviate a professional from any other duty they may have. Nevertheless, this Office is only issuing a legal opinion based on the current law at this time. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can

---

[4] There is some case law regarding S.C. Code § 63-7-310. See, e.g., Doe ex rel. Doe v. Wal-Mart Stores, Inc., 393 S.C. 240, 711 S.E.2d 908 (2011) (the court found there to be no private cause of action for negligence against a retail store based on the failure of an employee to report abuse pursuant to S.C. Code § 63-7-310); Doe v. Marion, 373 S.C. 390, 645 S.E.2d 245 (2004) (finding a psychiatrist had no duty under this statute to warn all foreseeable future victims).

[5] Please note S.C. Code Ann. § 63-7-420 discusses the abrogation of privileged communications with the exceptions of attorney-client and clergy-penitent in regards to the mandatory reporting of child abuse or neglect.

[6] S.C. Code Ann. § 63-7-310(A) (2010 Supp. 2014).

interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General