ALAN WILSON
ATTORNEY GENERAL

April 12, 2019

The Honorable Shannon Erickson
South Carolina House of Representatives
District No. 124
320-C Blatt Building
Columbia, SC 29201

Dear Representative Erickson:

You seek our opinion regarding the interpretation of S.C. Code Ann. Section 63-13-20(4)(e) relating "to exemptions from the definition of a child care facility as relates to what is commonly called summer camps." By way of background, you state the following:

> Item (4) is the definition of a child care facility and what it not a child care facility. Subitems (a) through (j) are specifically exempted [is] the definition of childcare facilities. Item (e) reads:
>
> (e) school vacation or school holiday day camps for children operating in distinct sessions running less than three weeks per session unless the day camp permits children to enroll in successive sessions so that their total attendance may exceed three weeks;
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> As I read this provision, what is clear to me is that any summer camp that is in business or operation for more than three weeks during the summer is not exempt from the definition of a child care facility. It would seem a reasonable conclusion that the General Assembly recognized many sports camps, vacation bible schools and other special camps operate on a limited basis for a period of three weeks or less. They also recognized that many summer camps are in the business of child care throughout the summer while school is out. These multi-week camps are in the business of child care and are therefore defined as child care facilities and are NOT exempt from licensing.
>
> Item (e) is an exception which clearly implies this is a carve out of a larger group of summer camps — namely those that are in operation longer than three weeks. Again what is excepted from the definition of a child care facility is the three weeks or less camps. This is then qualified by the word "unless". "Unless" the day camp permits children to enroll in successive sessions so that their total attendance may exceed three weeks. Some have read this and come to the absurd conclusion that the

same children can be re-enrolled in what is for all intents and purposes the same program they were in during the previous three weeks.

Certainly it can be said that a summer camp open for all or a major portion of the summer is defined as a child care summer camp fitting the definition of a child care facility. The question then becomes - can a summer camp "stack" three week sessions to subvert the intent of the law. In the first part of item (e) the words "operating in distinct sessions" appear. Again I believe the reasonable expectation was to accommodate a three week cheerleading camp or three- week baseball camp for example. It is beyond reasonable belief that a summer camp could say they have three- week session A followed by three-week session B followed by C and D to get 12 straight weeks of being in the business of a summer camp. Or equally unbelievable would be three weeks of "reading" camp followed by three weeks of "math" etc.

One can quickly see how this could be abused. If it is basically the same population of children doing largely the same activities, it seems to me that these are summer camps fitting the definition of a child care facility. The plain meaning leads to that understanding. To read it otherwise is to have the exception ("unless the day camp permits children to enroll in successive sessions so that their total attendance may exceed three weeks") devour the exception ("camps for children operating... less than three weeks").

Let me close with this thought. The State seeks to do its best to protect children who are in places that are in the business of providing child care. These extended summer camps are, under any definition, in fact in the business of child care. These summer camps should be held to a high standard of protecting children. It is an easy internet search to find summer camps who are subverting (or possibly unaware of the law) this law in our very state that leave the children and parents with little opportunity to address a tragedy after it happens and sadly denies the child and parent a level of protection on the front end.

S.C. Code Ann. Section 63-13-10 et seq. deals with the regulation of childcare facilities, as defined. Section 63-13-10 sets forth the overarching purpose of these provisions:

(A) The intent of this chapter is to define the regulatory duties of government necessary to safeguard children in care in places other than their homes, ensuring for them minimum levels of protection and supervision. Toward that end, it is the purpose of this chapter to establish statewide minimum regulations for the care and protection of children in childcare facilities, to ensure maintenance of these regulations and to approve administration and enforcement to regulate conditions in such facilities. It is the policy of the State to ensure protection of children under care in childcare facilities and to encourage the improvement of childcare programs.

(B) It is the further intent of this chapter that the freedom of religion of all citizens is inviolate. Nothing in this chapter shall give any governmental agency jurisdiction or authority to regulate, supervise, or in any way be involved in any Sunday school, Sabbath school, religious services or any nursery service or other program conducted during religious or church services primarily for the convenience of those attending the services.

> (C) Nothing in this chapter shall create authority for the Department of social Services to influence or regulate the curriculum of childcare facilities.

As you note, § 63-13-20 is a definitional section. Section 63-13-20(4) defines "childcare facilities" as follows:

> Means a facility which provides care, supervision, or guidance for a minor child who is not related to blood, marriage or adoption to the owner or operator of the 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, childcare centers, group childcare homes, and family childcare homes.

The term "childcare" is defined by § 63-13-20(2) as meaning "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 the children's own home or homes." The General Assembly also designated a number of exceptions to the term "childcare facilities" in § 63-13-20(4). These exclusions include:

> (e) school vacation or school holiday day camps for children operating in distinct sessions running less than three weeks per session unless the day camp permits children to enroll in successive sessions so that their total attendance may exceed three weeks.

The question you raise is the meaning of the exclusion from the definition of "childcare facilities." As stated, you note that "[s]ome have read this and come to the absurd conclusion that the same children can be re-enrolled in what is for all intents and purposes the same program they were in during the previous three weeks." As will be demonstrated below, such a construction is a circumvention of not only the language, but the express purpose of the State.

Law/Analysis

In interpreting § 63-13-20(4)(c), well-settled rules of statutory construction must be consulted. As set forth in Op. S.C. Att'y Gen., 2011 WL 1740748 (April 26, 2011), a number of these principles of interpretation were summarized as follows:

> In interpreting any statute, we must begin with certain fundamental principles of statutory construction. First and foremost, is the cardinal rule that the primary purpose in interpreting statutes is to ascertain the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). In addition, a statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's

> operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Furthermore, a particular clause or provision in a statute should not be construed in isolation, but should read it in conjunction with the purpose of the statute and the policy of the law. State v. Gordon, 356 S.C. 143, 588 S.E.2d 105 (2003). In addition, in determining the legislative intent, the Court will, if necessary, reject the literal import of words used in a statute. It has been said that "words ought to be subservient to the intent, and not the intent to the words." Greenville Baseball. Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813, 816 (1942).

Moreover, that opinion recognized that:

> Additionally, a statute will be construed to avoid an absurd result. Any statute must be interpreted with common sense to avoid unreasonable consequences. United States v. Rippetoe, 178 F.2d 735 (4th Cir. 1949). A sensible construction rather than one which leads to irrational results is always warranted. McLeod v. Montgomery, 244 S.C. 308,136 S.E.2d, 778(1964).

Further, "where a statute is remedial in nature, it must be broadly construed in order to accomplish the object sought." Op. S.C. Att'y Gen., 2014 WL 4165337 (August 8, 2014) (citing S.C. Dept. of Mental Health v. Hanna, 270 S.C. 210, 213, 241 S.E.2d 563, 564 (1978) and Inabinet v. Royal Exchange Assur. Of London, 165 S.C. 33, 36, 162 S.E. 599, 600 (1932). In this regard, as we stated in Op. S.C. Att'y Gen., 2004 WL 3058239 (December 31, 2004), "[w]e have previously concluded that a licensing statute is remedial in nature and should be liberally construed in order to effectuate the Legislature's purpose." (citing Op. S.C. Att'y Gen., March 30, 2004).

Applying these principles of construction to the question you pose, we believe the meaning of § 63-13-20(4)(d) is clear. The exemption only encompasses children's "day camps" which operate in "distinct sessions" of three weeks or less. The statute itself states that the "day camp" exceptions may not be circumvented by permitting "children to enroll in successive sessions" which allow the three week limit to be exceeded. It is a well-recognized rule of law that "[t]hat which cannot be done directly cannot be done indirectly." Richardson v. Blalock, 118 S.C. 438,110 S.E. 678, 679 (1922). It would be, as your letter states, absurd to permit an exception for three weeks or less for "day camps" and then to allow that limited and sensible exception to be circumvented by allowing a child to "stack" a succession of three week sessions into a much longer period. We do not believe the General Assembly permitted such an "end run."

Here, the exception must be narrowly construed, consistent with the legislative purpose of protecting children, while at the same time, not requiring licensure of ordinary "day camps" which, by definition, have sessions of three weeks or less. The common meaning of a "day camp" is "a daytime program offering supervised recreational and sporting activities for children, especially in summer and during school vacations." (google.com). A "day camp" is a "children's camp providing recreation and meals during the day but no overnight facilities." (The Free Dictionary). In other words, the General Assembly here required that "childcare facilities,"

as broadly defined, must be licensed, but allowed an exception for those short term (three weeks or less per session) holiday or summer "day camps" for children in order to encourage the use of such camps for a child's recreational or sporting enjoyment. However, § 63-13-20(4)(e) does not permit this limitation to be avoided through indirect means by "stacking" a child's enrollment in successive three week sessions so that the three week limitation is rendered meaningless.

Conclusion

As your letter indicates, "[i]t would seem a reasonable conclusion that the General Assembly recognized many sports camps, vacation Bible schools, and other special camps operate on a limited basis for a period of three weeks or less." However, "many summer camps are in the business of childcare throughout the summer while school is out. These multi-week camps are in the business of childcare and are therefore defined as childcare facilities and are not exempt from licensing." We agree with your analysis.

Here, the General Assembly's intent was simply that short term day camps for children of three weeks or less are exempt from the definition of "childcare facilities" and do not require a license. However, the Legislature also made clear that such day camps, whose sessions were greater than three weeks, must be licensed. This requirement imposed by the General Assembly cannot be circumvented by a child's attending successive sessions, one or more on top of the other. To do so would render the exemption for day camps meaningless and would severely undermine the requirement for licensure.

Of course, our opinion herein is construing the law as it is presently written. If the General Assembly disagrees or wishes to change the law, it is, of course, free to do so.

Sincerely,

Robert D. Cook
Solicitor General