

1972 WL 25941 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 5, 1972

***1 Re: Section 56-745.5(1) of the 1962 Code of Laws of South Carolina as amended**

Mr. J. Richard Coney
Director
Health Facilities Division
S. C. State Board of Health
2600 Bull Street
Columbia, South Carolina 29201

Dear Mr. Coney:

You have requested that this office render an opinion as to the meaning of Section 56-745.5(1) of the 1962 Code of Laws of South Carolina as amended.

This section, which provides that certain qualified persons are exempt from the hearing aid dealers and fitters examination, states: 'Has been principally engaged as a hearing aid dealer and fitter for a total period of at least two years within a period of five years immediately prior to January 1, 1972.'

'Principally engaged' has been judicially defined as the occupation or business on which the party chiefly relies for a livelihood and that which engrosses the most of his time and attention throughout the year.

With this above definition in mind, two possible constructions of Section 56-745.5(1) as amended are possible. The first construction and that favored by the courts generally follows the 'plain meaning rule.' [Hatchett v. Nationwide Mutual Insurance Co.](#), 244 S.C. 425, 137 S.E.2d 608. Under this construction the wording, 'for a total period of at least two years within a period of five years,' would mean that the applicant would have to have been principally engaged in the practice for two years out of the five prior to January 1, 1972. This would be a strict construction of the statute and would allow exemptions for only those who for two years out of the past five derived their principal means of livelihood from the sale and fitting of hearing aids.

A more liberal construction is available following the doctrine of conforming to the legislative intent as has been established in this state in the case of [Jones v. South Carolina State Highway Department](#), 247 S.C. 132, 146 S.E.2d 166, and that of construing a statute in light of its intended purpose. [Bohlen v. Allen](#), 228 S.E. 135, 89 S.E.2d 99. Under these doctrines, the wording, 'for a total period of at least two years within a period of five years,' could be construed to mean that exemptions are available to those who within the past five years have devoted a sufficient portion of their time and energies to accumulate a period of at least two years of principally engaging in the practice of selling and fitting hearing aids. This construction would allow an individual who has devoted, for instance, 30 percent of his time over the past five years to the practice of selling and fitting hearing aids to accumulate this time, the accumulated portion being equivalent to at least two years of being principally so engaged.

It is the opinion of this office that either of the above constructions is reasonable and could stand legal attack. In expressing this opinion it must be noted that a question of statutory construction is capable of varied interpretations and no opinion can be issued thereon, which is free from all possible legal doubt.

***2** I trust this will be sufficient to answer the question which you posed. If we may be of any further assistance, please do not hesitate to call.

Very truly yours,

Timothy G. Quinn
Assistant Attorney General

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