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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

January 26, 2006

Michael D. Morin, Assistant Solicitor
Seventh Judicial Circuit
Spartanburg County Courthouse
180 Magnolia Street
Spartanburg, South Carolina 29306

Dear Mr. Morin:

In a letter to this office you questioned whether a school bus supervisor is required by law to report to the Department of Social Services or law enforcement allegations or evidence of sexual abuse. In our telephone conversation you indicated you were referencing the requirements of S.C. Code Ann. § 20-7-510 which states

(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, social or public assistance worker, substance abuse treatment staff, or childcare worker in a childcare center or foster care facility, police or law enforcement officer, undertaker, funeral home director or employee of a funeral home, persons responsible for processing films, computer technician, or a judge 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 20-7-490.

(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.

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(C) Except as provided in subsection (A), any 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.

As to sexual abuse, pursuant to S.C. Code Ann. § 20-7-490(2)(b), "child abuse or neglect" occurs whenever a parent, guardian or other person responsible for the child's welfare "commits or allows to be committed against the child a sexual offense as defined by the laws of this State or engages in acts or omissions that present a substantial risk that a sexual offense as defined in the laws of this State would be committed against the child." As to the criminal penalties for failure to report, S.C. Code Ann. § 20-7-560 states

A person required to report a case of child abuse or neglect or a person required to perform any other function under this article who knowingly fails to do so, or a person who threatens or attempts to intimidate a witness is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than six months, or both.

In construing Section 20-7-510, this office in a prior opinion dated January 7, 2004 stated that certain principles of statutory construction are relevant. The opinion stated that

(f)irst and foremost is the fundamental rule of construction which requires that the legislative intent must be ascertained and given effect...Such legislative intent must prevail if it can reasonably be discovered from the language used. Clearly, the legislative wording is construed in light of the General Assembly's intended purpose...In essence, the statute as a whole must receive a reasonable, practical and fair interpretation consistent with the purpose, design and policy of the lawmakers...Moreover, the legislation's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or expand the operation of the statute...The plain meaning of the statute cannot be contravened...Courts must apply the clear and unambiguous terms of a statute according to their literal meaning...In addition, when a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant...Where a statute is remedial in part and penal in other parts, the remedial portions are to be construed liberally, to carry out the purpose of the act; the penal portions are to be construed strictly, however.

A school bus supervisor is not specifically designated an individual required by Section 20-7-510(A) to report child abuse or neglect. Therefore, consistent with the referenced rules of statutory construction, a school bus supervisor would not have a statutorily required duty to report allegations or evidence of sexual abuse of a child.

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As to your question regarding whether that statute is all inclusive as to who must report, in Jensen v. S.C. Department of Social Services, 297 S.C. 323, 377 S.E.2d 102,105 (S.C. App. 1988), it was stated that

(o)rdinarily, the common law imposes no duty on a person to act. An affirmative legal duty exists only if created by statute, contract, relationship, status, property interest, or some other circumstance.

Section 20-7-510 (A) is inclusive as to those individuals statutorily required to report allegations of abuse or neglect and there is no mandatory statutory duty for a school bus supervisor to make such a report. However, as set forth by subsection (C) of such provision, a school bus driver may report abuse or neglect if he "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." As to immunity for reporting allegations of abuse or neglect, pursuant to S.C. Code Ann. § 20-7-540

A person required or permitted to report pursuant to this article or who participates in an investigation or judicial proceedings resulting from the report, acting in good faith, is immune from civil and criminal liability which might otherwise result by reason of these actions. In all such civil or criminal proceedings, good faith is rebuttably presumed. Immunity under this section extends to full disclosure by the person of facts which gave the person reason to believe that the child's physical or mental health or welfare had been or might be adversely affected by abuse or neglect. (emphasis added).

Therefore, there is statutory immunity for reports made of abuse or neglect consistent with this provision.

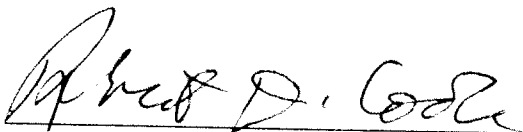
If there are any questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General