



HENRY McMASTER
ATTORNEY GENERAL

January 23, 2009

The Honorable André Bauer
Lieutenant Governor
Post Office Box 142
Columbia, South Carolina 29202

Dear Lieutenant Governor Bauer:

We understand that you were contacted by David Colburn of DC Training concerning the application of South Carolina statutes and regulation concerning the licensing of truck driver training schools. You attached with your request a letter from Mr. Colburn, which states as follows:

On October 6th, 2008, I received a letter from the [South Carolina Department of Motor Vehicles], Office of CDL Compliance stating that technical schools must be properly licensed as truck driver training schools and meet all of the requirements under the regulations (Chapter 90, Article Two, 90-101). According to the ruling, "vendor" relationships, where another licensed school teaches for an unlicensed technical school, has been going on in direct violation of South Carolina Code of Law and Chapter 90, Article Two. Furthermore, there has never been a provision in the regulations for two party or vendor relationships and how such partnerships would operate. I agreed with this ruling because if a technical school wants to compete in the marketplace with DC Training, it must be in total compliance with the regulations as we were required to be.

However, a new and much different letter was issued by SCDMV on December 5th, 2008 exempting technical schools from some of the regulations, notably 90-101

Thus, we understand you desire an opinion of this Office on behalf of Mr. Colburn addressing whether the South Carolina Department of Motor Vehicles ("SCDMV") may exempt technical schools from regulations generally applicable to driver training schools.

Law/Analysis

Chapter 23 of title 56 of the South Carolina Code governs licensing of driver education and training schools. Section 56-23-10 of the South Carolina Code (Supp. 2007) requires driver education or training schools be licensed by the SCDMV. This provision states:

A person may not engage in the business of training or educating persons to drive or operate motor vehicles or offer training or education to conduct either the classroom or the behind the wheel training, or both, for which a fee or charge is made, unless and until the person has obtained and holds a valid driver training school license issued by the Department of Motor Vehicles. A person may hold a license to teach classroom only or to teach behind the wheel training only. The licensee must have a permanent location in this State and all motor vehicles used for behind the wheel instruction must be registered in this State. If licensed for classroom training only, the motor vehicle requirement shall be waived.

However, section 56-23-20 of the South Carolina Code (Supp. 2007) exempts “[c]lassroom courses offered by state institutions and duly accredited and approved colleges, public, parochial and private high schools in which classroom driver education is part of the curriculum or to employers giving instruction to their licensed employees . . .” from the licensure requirement. S.C. Code Ann. § 56-23-20. Section 56-23-60 of the South Carolina Code (Supp. 2007) states that the SCDMV is charged with establishing the minimum standards for the operation of driver training schools. This provision also states that the minimum standards “must include, but are not limited to, a requirement that driver training schools have or have access to sufficient facilities and equipment to conduct an eight-hour defensive driving course for a minimum of ten students.” S.C. Code Ann. § 56-23-60.

As Mr. Colburn referenced in his letter, in accordance with its authority, the SCDMV promulgated regulations governing truck driver schools, which are found in chapter 90 of the South Carolina Code of Regulations. Section 90-101 of the South Carolina Code of Regulations (Supp. 2007) provides the SCDMV’s requirements for the operation of a truck driver training school. This regulation provides:

The Department shall not issue a license for a truck driver training school to any individual, partnership, group, association, or corporation, except as exempted by Section 56-23-20 of the South Carolina Code of Laws unless:

(1) The individual, partnership, group, association, or corporation, has at least one (1) commercial motor vehicle registered or leased in the name of the truck driver training school, and the motor vehicle(s) is/are inspected by a Departmental representative and for which the Department has received a certificate of insurance; and

(2) The individual, partnership, group, association, or corporation has at least one (1) person licensed by the Department as a truck driver training instructor for that truck driver training school.

S.C. Code Ann. Reg. 90-101.

The letters from the SCDMV that Mr. Colburn included with his letter indicate that some technical schools are subcontracting the operation of their truck driver training programs to third parties. The earlier letter from the SCDMV indicates that the SCDMV's position that when both the technical school and the subcontractor are charging a fee, both must be licensed and both must satisfy the requirements under the regulations. However, the most recent letter from the SCDMV states that while both the technical school and the subcontractor must be licensed, the technical school may satisfy the licensure requirements without owning trucks and employing instructors itself. The letter indicates this requirement may be fulfilled by the fact that the subcontractor fulfills these requirements.

Initially, we must acknowledge that "state law does not authorize this Office to supersede the administrative authority or discretion of an officer, agency or public body as administrative interpretation of an agency's own rules, regulations, or directives are accorded great deference." Op. S.C. Atty. Gen., August 21, 1991. Moreover, our courts generally give "deference to an administrative agency's interpretation of an applicable statute or its own regulation." Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003). However, when "the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation." Id.

Based on our reading of regulation 90-101, the SCDMV cannot issue a license unless the licensee both has a commercial motor vehicle registered or leased in the licensee's name and the licensee employs a least one person who qualifies as a licensed instructor. Given the plain language of this provision, we do not believe a technical school may be licensed by the SCDMV without satisfying these criteria.¹

¹For purposes of this opinion, we assume that the driver training courses taught at technical schools consist of both classroom and behind the wheel training. Otherwise the technical school may be exempt from licensure pursuant to section 56-23-20.

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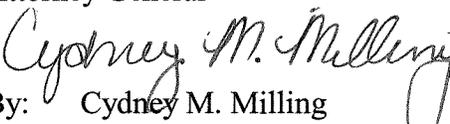
Nonetheless, we note that the requirements set forth in 90-101 are requirements imposed by the SCDMV, not by the statutory provisions governing driver training schools. Moreover, section 56-23-60, giving authority to the SCDMV to develop standards and conditions of operations for driver training schools, places only one statutorily mandated requirement on driver training schools, which is not at issue here. Thus, if the SCDMV so chose, it could seek to amend its current regulations. However, so long as the regulation remains in force and effect, SCDMV is legally required to comply with the regulation. See Triska v. Dep't of Health and Env'tl. Control, 292 S.C. 190, 194, 355 S.E.2d 531, 533(1987); Converse Power Corp. v. South Carolina Dep't of Health and Env'tl. Control, 350 S.C. 39, 54-55, 564 S.E.2d 341, 350 (Ct. App. 2002), Op. S.C. Atty. Gen., May 8, 2003.

Conclusion

Based on our review of regulation 90-101, in order for the SCDMV to issue a license to a truck driving school, the school must have both a commercial vehicle registered or leased in the name of the school and employ at least one licensed instructor. Although great deference should be afforded to the SCDMV's interpretation of its regulations and we cannot, in an opinion of this Office, supercede any decision made by the SCDMV with regard to its regulations, if a technical school fails to meet these requirements, we do not believe the SCDMV may issue a license to the technical school based on the requirements in its regulations. However, because these are regulatory requirements and not statutory requirements, if the SCDMV wishes to amend this regulation to allow for technical schools to obtain a license without meeting these requirements or to satisfy these requirements by entering into an agreement with a subcontractor who will provide the necessary vehicles and instructors, it may do so in accordance with its authority to establish minimum standards for the operation of driver training schools.

Very truly yours,

Henry McMaster
Attorney General


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REVIEWED AND APPROVED BY:


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