



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 7, 1997

The Honorable Ralph J. Wilson
Solicitor, Fifteenth Judicial Circuit
P. O. Box 1276
Conway, South Carolina 29526

Re: Informal Opinion

Dear Solicitor Wilson:

You have requested an opinion of this Office regarding the scope of S.C.Code Ann.Sec. 16-3-1040. You note that

[o]n November 13, 1996, the Defendant, Bobby Earl Bellamy, went to Conway Middle School Guidance office and began to curse and scream at Guidance counselor, Kaye Hardister. He was furious at Ms. Hardister because she allowed the Defendant's daughter to call DSS from her office alleging the Defendant was molesting her. The Defendant then told Ms. Hardister that he was going to shoot and kill her and that it is not a threat but a promise. He also told her she better watch her own kids because he would make sure they do not come home. The Defendant then moved towards Ms. Hardister throwing his hands near her and as he approached the front door, he was arrested.

The Opinion requested deals with whether a guidance counselor is protected under this statute since it only mentions public officials, teachers and principals. It is our position that the intent of this statute is to protect all school officials in the course of their duties in order to maintain a safe and productive learning environment.

Law / Analysis

S.C. Code Section 16-3-1040 provides as follows:

[i]t is unlawful for any person to knowingly and wilfully deliver or convey to a public official or to a teacher or principal of an elementary or secondary school any letter or paper, writing, print, missive, document, or electronic communication or any verbal or electronic communication which contains any threat to take the life of or to inflict bodily harm upon the public official, teacher, or principal, or members of their immediate families.

Any person violating the provisions of this section must, upon conviction, be punished by a term of imprisonment of not more than five years.

For purposes of this section:

(1) "Public official" means any elected or appointed official of the United States or of this State or of a county, municipality, or other political subdivision of this State.

(2) "Immediate family" means the spouse, child, grandchild, mother, father, sister, or brother of the public official, teacher, or principal.

A number of important principles of statutory construction are pertinent to your inquiry. First and foremost, is the time-honored tenet that the primary guideline to be used in the interpretation of statutes is to ascertain and give effect to the intention of the Legislature. Belk v. Nationwide Mut. Ins. Co., 271 S.C. 24, 244 S.E.2d 744 (1978). 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. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). The words used therein should be given their plain and ordinary meaning. Worthington v. Belcher, 274 S.C. 366, 244 S.E.2d 148 (1980). The interpretation should be according to the natural and obvious significance of the wording without resort to subtle and refined construction for the purpose of either limiting or expanding the statute's operation. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942).

Solicitor Wilson
Page 3
August 7, 1997

The term "teacher" is not defined in the statute. There are several statutory definitions of the word "teacher" in other parts of the Code, however. For example, in Section 59-5-67, the General Assembly provided for the award of grants to teachers for the purpose of improving teaching practices and procedures within the budgetary limitations authorized by the General Assembly. For the purposes of such Section, the General Assembly mandated that the term "teacher" includes "teachers, librarians, guidance counselors, and media specialists." Section 59-1-130 also defines a "teacher" as "any person who is employed either full-time or part-time by any school district either to teach or to supervise teaching." For purposes of the statute relating to the employment and dismissal of teachers, Section 59-25-410 et seq., the term "teacher" includes "all employees possessing a professional certificate issued by the State Department of Education, except those employees working pursuant to multi-year contracts. It is my understanding that in South Carolina a guidance counselor possesses a professional certificate in guidance counseling issued by the Department of Education by way of a process similar to the issuance of a teaching certificate.

Admittedly, in other jurisdictions, professional personnel or paraprofessionals have been held not to be "teachers" for various purposes under the particular statute in question. See, Dodd v. Meno, Tex. 870 S.W.2d 4 (Tex.1994) [school nurse]; Bryan v. Alabama State Tenure Comm., 472 So.2d 1052 (Ala.Civ.App.1985) [coach]; Harrison Co. Sch.Bd. v. Morreale, Miss., 538 So.2d 1196, 1200 (Miss.1989) [aide].

However, the issue which is determinative here is whether a guidance counselor would be considered a "teacher" or a "public official" for purposes of Section 16-3-1040. In other words, did the General Assembly intend to exclude guidance counselors and other similar professionals from the protection of the anti-threats law?

A guidance counselor comes in contact with potentially irate students and parents in much the same way as a teacher or principal. The guidance counselor renders professional advice concerning the student's curriculum, test scores, career track etc. just as the teacher conveys knowledge.

The Massachusetts Attorney General read the term "teacher" within a statute broadly to include guidance counselors because these are employees "whose positions are part of, or closely related to traditional classroom teaching functions." 1977-78 Mass.Op.Atty.Gen., Op.No. (July 26, 1977).

Likewise, in Op.Atty.Gen., Op.No. 3488, (March 12, 1973), this Office concluded that a statute precluding receipt of pay as a teacher while serving on the board of Trustees of a different school district similarly disqualified a guidance counselor. We stated that the

Solicitor Wilson
Page 4
August 7, 1997

term "teacher" should be read broadly to cover guidance counselors as well. There we concluded:

[a]s for a definition of teacher, no definition of this term appears in Title 21, relating to the public schools in South Carolina. In the absence of a general definition or a specific definition as it relates to Section 21-240, I am of the opinion that the term "teacher" should not be restricted so as to apply to only classroom teachers but should apply to all personnel holding a teaching certificate and employed under a professional contract.

Based upon the foregoing, and in view of the obvious legislative intent of Section 16-3-1020 to prohibit threats made against school officials and employees, I agree with your conclusion that guidance counselors should be covered by the statute. It would make little or no sense here to conclude that the statute relates only to classroom teachers since the General Assembly had the opportunity to limit the statute's applicability to classroom teachers only. Many of the same pressures, confrontations and potentially explosive situations would apply just as readily to guidance counselors as to the classroom teachers. Moreover, such a conclusion is not in any way inconsistent with several of the statutory definitions of "teacher" referenced above. My understanding is that a guidance counselor in South Carolina is certified by the Department of Education as a guidance counselor by way of a process similar to the issuance of teaching certificates. Accordingly, I believe that a court would construe the term "teacher" broadly for purposes of Section 16-3-1040 to cover a guidance counselor.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph