

1982 WL 189329 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 14, 1982

*1 Charles D. Barnett, Ph.D.
Commissioner
Department of Mental Retardation
2712 Middleburg Drive
Post Office Box 4706
Columbia, South Carolina 29240

Dear Dr. Barnett:

You have requested an opinion concerning the meaning of § 44-21-510 of the Code of Laws of South Carolina (1976). In pertinent part, this provision requires that:

No facility or program shall be operated in part or in full for the housing, care, maintenance, education, training or treatment of the mentally retarded unless a license is first obtained from the South Carolina Department of Mental Retardation.

With respect to this provision, you state that '[a] question of jurisdiction has been raised by Piedmont Sertoma Enterprises of Spartanburg on the premise that it is an employer of the mentally retarded and does not provide any of the services by name.' You specifically ask 'how we should define 'care' and 'treatment' as listed in the statute.' In addition, you inquire 'whether or not Piedmont Sertoma Enterprises' is subject to licensing by this department.' Your letter encloses a 'description of the Piedmont Sertoma program' and further notes that 'the Board of Directors of Piedmont Sertoma Enterprises concurs in this description.'

Initially, it should be noted that the actual licensing function, authorized by § 44-21-510, is solely the responsibility of the Department of Mental Retardation. This office may only advise as to the meaning of the licensing provision as it construes such provision, and apply the facts as you have presented them to that construction. Your letter fully indicates your recognition of this point, and I reiterate it merely to more fully delineate the scope of this opinion.

As to the merits of your questions:

. . . [T]here is reason to follow a policy of reasonable construction with respect to statutes that require licenses and are intended to regulate business and other activity in the interests of economic welfare and safety. . . . [T]he modern trend appears to favor a more liberal construction in the interest of carrying out the intended object of such laws. Sutherland, Statutory Construction, § 66.10. [See, e.g., McKenzie v. People's Baking Co., 205 S.C. 149, 31 S.E.2d 154].¹

However, it must be remembered that the primary rule in the construction of statutes is to ascertain and give effect to the intent of the Legislature. McGlohan v. Clark, 254 S.C. 207, 174 S.E.2d 753. The purpose of statutory construction is to ascertain legislative intent from the words used, and if such words are susceptible to any sensible meaning, other words which would alter the meaning may not be added. Independence Ins. Co. v. Independent Life and Acc. Ins. Co., 218 S.C. 22, 61 S.E.2d 399.

In the enactment of § 44-21-510, it would appear that the General Assembly intended a limitation upon the Department of Mental Retardation's licensing authority to one or more of those activities or services expressly enumerated in the provision. On its face, this statute makes only the 'housing, care, maintenance, education, training or treatment of the mentally retarded' the subject of licensing by the Department. Nothing in this provision would indicate that other activities or services rendered the mentally retarded, and which do not fall within the meaning of at least one of the terms mentioned, were intended to fall

within the statute's regulatory scope. No language in § 44-21-510 even suggests that the functions enumerated therein represent only examples of activities subject to licensure, and that activities not listed, likewise might be subject to the Department's licensing authority.

*2 Moreover, it is well settled as a general rule of construction that enumeration of particular things in a statute often implies an intention to exclude all other things. See, [E.M. Mathews Co. v. Atlantic Coast Line R. Co.](#), 102 S.C. 494, 85 S.E. 1069; [Jones v. H.D. & J.K. Crosswell](#), 60 F.2d 827 (4th Cir. 1932). Accordingly, even though licensing statutes such as this one are usually to be broadly construed, words cannot be inserted in order to change the meaning of the statute where no such intention is indicated. Thus, it is difficult to escape the conclusion that, in order for the Department of Mental Retardation to require a license, pursuant to § 44-21-510, the 'program or facility' must be 'operated in part or in full' for the 'housing, care, maintenance, education, training or treatment of the mentally retarded.'

As posited, the facts virtually eliminate the enumerated functions of 'housing' and 'maintenance' from consideration. Based upon any reasonable definition,² no such services are provided here, as you note that 'the facility does not provide client transportation or food'. You further indicate that clients remain at the facility only during normal working hours. Thus, it would represent almost an absurd construction to apply these terms to the Piedmont situation.

The question of 'treatment', about which you specifically inquire, is much more difficult. The meaning of this word, as intended by the General Assembly is far from clear. Section 44-23-10(11) contains a definition, which is arguably the one intended.³ However, this provision was not made applicable to Chapter 21 of the Code (where § 44-21-510 is found), yet was expressly made so as to several other chapters generally concerning care for the mentally ill.

In the absence of a legislative definition, usually the common and ordinary meaning is controlling. [Greenville Enterprises v. Junnings](#), 210 S.C. 163, 41 S.E.2d 868. Here, however, it is not at all clear the ordinary meaning was intended. Usually, 'treatment' signifies those 'steps taken to effect a cure of an injury or disease . . .'. [Phaler v. Eclipse Pioneer Div. of Bendix Aviation Corp.](#), 122 A.2d 644, 648; see also, cases collected in 42A Words and Phrases, 'Treatment'. However, it is well understood that the mentally retarded 'are not ill', because of retardation, [Pennhurst State School v. Halderman](#), 451 U.S. 1, 67 L.Ed.2d 694, 701, n. 2. Moreover, the General Assembly has recognized this fact by providing a program of habilitation for the retarded in South Carolina. See, § 44-21-10 et seq. Therefore, if 'treatment' was intended in the ordinary sense, it would mean no more than attention to the retarded's medical needs, generally the same as, but not identical to, those of any other person. See, Herr, 'Civil Rights, Uncivil Asylums, and the Retarded', 43 Cinn.L.Rev. 679, 734. The problem with the construction, however, is at least twofold. The word 'maintenance', also used in '44-21-510, normally encompasses ordinary medical care. Moreover, examination of the various statutes dealing with mental retardation suggests that 'treatment' was intended to represent a much more integral part of the habilitation process. See, e.g., § 44-21-20.

*3 Indeed, the term 'treatment' is often used interchangeably with the broad gamut of services to the retarded, referred to as 'habilitation'.⁴ However, the United States Supreme Court in [Pennhurst State School v. Halderman](#), *supra*, has emphasized that today 'treatment' properly 'applies to curable mental illness', whereas "habilitation" . . . consists of education and training for those, such as the mentally retarded, who are not ill.' (emphasis added). Other recent cases and commentaries make this same distinction. See, [School Lane Hills, Inc. v. East Hempfield T. Zon. H.B.](#), 336 A.2d 901, 903; [Evans v. Washington](#), 459 F.Supp. 483 (D.D.C. 1978); Mason and Menoloschino, 'The Right to Treatment for Mentally Retarded Citizens . . .' 10 Creighton L.Rev. 124, 137.

At the time § 44-21-510 and related statutes were enacted, however, these professional nuances were only beginning to be made. Thus, it is reasonable to conclude that, at the time of enactment, use of the term 'treatment' with respect to the retarded was intended as meaning an integral part of the habilitation process. See, § 44-21-10 et seq.; see also, [State v. Kizer](#), 164 S.C. 383, 162 S.E. 444 (statute must be construed in light of conditions when enacted). At least, such a construction is more likely than the others available⁵ and it appears the meaning most probably intended by the General Assembly.

It is equally difficult to apply this less than clear definition to these facts. There is certainly no strong indication in the facts presented that Piedmont is providing 'treatment' in any normal medical sense.⁶ If indeed 'treatment' as used here does mean 'habilitation' or a significant part of the habilitative process, the fact that Piedmont has been certified as a 'sheltered workshop' would be sufficient to meet this definition. See, below. However, in view of the ultimate conclusion reached in this opinion, that Piedmont is operating for the 'education' and/or 'training' of the the mentally retarded, there is no need to attempt to apply incomplete facts to a less than clear meaning of 'treatment' intended by § 44-21-510.⁷

Based upon the facts which you pose, the terms 'education' and 'training' therefore appear determinative to your question whether Piedmont is 'subject to licensing' by the Department of Mental Retardation, pursuant to the authority provided by § 44-21-510. It is well established that words used in a statute should normally be given their ordinary or generally accepted meaning, Greenville Enterprise v. Jennings, *supra*; Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148, unless there is something contained in the statute requiring such words to be used in their legal meaning. Hughes v. Edwards, 265 S.C. 259, 220 S.E.2d 231. The words 'education' and 'training' are both quite broad in their usually understood definition. See, In Re Petty, Iowa, 41 N.W.2d 672, 675; State v. Rowan, Tenn., 106 S.W.2d 861; New Britain Trust Co. v. Stoddard, Conn., 179 A.2d 281, 284; Trishman v. J.C. Penney Cas. Ins. Co., Ohio, 374 N.E.2d 651, 653.

*4 'Education' generally comprehends the 'acquisition of all knowledge tending to develop and train the individual.' In re Petty, *supra*. It is 'the process of developing and training the powers and capabilities of human beings and is not necessarily derived from the study of books in school' Barbers Comm. of Mobile Co. v. Hardeman, Ala., 21 So. 2d 118. To 'educate' is 'to prepare and fit for any calling or business or for activity and usefulness in life.' Mount Herman Boys School v. Town of Gill, Mass., 13 N.E. 354, 537. See also, Powell, et al. v. Thomas, 514 S.C. 376, 386, 52 S.E.2d 782; 14 Words and Phrases, 'Educate, Education'.

'Training' as generally understood is 'a drill or discipline by which power of the mind or body are developed.' Severson v. Sueppel, Iowa, 152 N.W.2d 281, 284. The word means simply 'an improvement in the normal human condition'. School Lane Hills, Inc. v. East Hempfield Township Zoning H.B. *supra* at 903. This function may be accomplished by 'observation, verbal instruction, or doing or combination of the same.' Trishman v. J.C. Penney Cas. Ins. Co., *supra* at 654, 42 Words and Phrases, 'Training'.

With respect to the area of expertise which deals with the habilitation of the mentally retarded, these broad definitions are generally applicable. For example, the 'education and training' of the mentally retarded is the action or process of teaching or learning directed toward increased development, skill or knowledge derived from formal or informal instruction, experience, training, etc. Manual On Terminology and Classification in Mental Retardation, 1977 Revision, 'Education'. See also, Manual, *supra*, 'Training'.

Thus, there exists no real disagreement as to the meaning of these terms. Even if such disagreement might be found, through application of a narrower meaning, connoting the formal and structured education and training generally received in the school system, see, State Dept. of Hygiene v. Dolan, 392 N.Y.S.2d 980, it is apparent here that the General Assembly intended the broader meaning. This is especially true since § 44-21-510 exempts from licensure '[e]ducational and training services offered under the sponsorship and direction of school districts.' Thus, the terms 'education' and 'training' as used in this provision, should be construed to generally encompass that instruction which seeks to improve the human condition of the mentally retarded by increasing the retarded person's development, skill or knowledge. School Lane Hills, Inc., *supra*; Manual on Terminology and Classification in Mental Retardation, *supra*.

The facts as you have presented them appear⁸ to warrant the conclusion that the facility in question is being operated at least in part,⁹ for the 'education' and/or 'training' of the mentally retarded. Significantly, you note that 'the facility is certified by

the United States Department of Labor as a sheltered workshop’ The term ‘sheltered workshop’ has been defined by the Department of Labor for purposes of certification as

***5** a charitable organization or institution conducted not for profit, but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers, and/or providing employment or other occupational rehabilitating activity of an educational or therapeutic nature. (emphasis added). 29 C.F.R. § 525.2(b).

Such certification by the Department of Labor would go far in determining that Piedmont is being operated for the ‘education’ and/or ‘training’ of the mentally retarded. Certainly, if Piedmont is providing ‘a recognized program of rehabilitation for handicapped workers’ it would likely fall within the reach of § 44-21-510, which encompasses virtually the entire gamut of habilitation services. See above; see also, *Wyatt v. Stickney*, *supra*. Moreover, in further defining a ‘sheltered workshop’, § 525.2(b) appears to deem ‘remunerative employment’ as being of an ‘educational or therapeutic nature’. Clearly then, based upon Piedmont’s certification as a ‘sheltered workshop’ by the Department of Labor, it is probable that this facility is being operated for the ‘education’ and/or ‘training’ of the mentally retarded, within the meaning of § 44-21-510, as defined above.

This conclusion is supported by case law. For example, in *Hughey v. Cloninger, N.C.*, 253 S.E.2d 898, 900, the Supreme Court of North Carolina discussed the basic concept of a ‘sheltered workshop’, as that term is generally understood.

The objective of a sheltered workshop is th help people handicapped . . . [mentally or physically] to ‘achieve the maximum functioning of which they are capable.’ I. Zwerling, *Aftercare Systems*, in 5 *American Handbook of Psychiatry* 729 (D. Freeman, J. Dyrudeds. 1975). To accomplish this objective the sheltered workshop provides a working environment similar to that in the real world in which the . . . [client] works at a job and receives training in vocational and social skills. The therapeutic philosophy of a sheltered workshop is to rehabilitate the handicapped . . . rather than to treat the underlying causes of their physical or mental disability. Treatment ‘represents a direct attack on the disabilities of the patient, while [rehabilitation] represents an effort to identify and exploit the [client’s] assets to the end of providing the best possible community role.’ *Id.* Ultimately, it is hoped the rehabilitative program provided by the sheltered workshop will help make ‘the transition to autonomous community life easier . . .’ F. Braceland, *Rehabilitation*, in 5 *American Handbook of Psychiatry* 695.

Moreover, in *School Lane Hills, Inc. v. East Hempfield Townwhip Zoning H.B.*, *supra*, the Court held that a center which had as its purpose ‘the training of retarded youths to assume a positive role in society by providing them with certain industrial skills . . .’ was ‘educational’ in nature. The Court applied a broad definition of ‘education’ and ‘training’ and concluded: While such skills [industrial] may appear simplistic to a ‘normal’ person, their assimilation nonetheless represents a great improvement in the normal human condition of the trainees. The nature of the Child Development Center is no less educational than that of the most demanding university. *Supra* at 903-904. ¹⁰

***6** Therefore, based solely upon the facts which you have presented, it is the opinion of this office that Piedmont Sertoma Enterprises of Spartanburg is ‘subject to licensing’ by the Department of Mental Retardation, pursuant to the authority vested in the Department by § 44-21-510 *et seq.* This opinion is based upon the conclusion that, at the least, Piedmont is ‘operated in part or in full for the . . . education [and/or] training . . . of the mentally retarded . . .’

Very truly yours,

Robert D. Cook
Assistant Attorney General

Footnotes

1 In *McKenzie*, *supra*, the Court stated that where licensing statutes are not being construed in the context of criminal prosecutions, but in the civil courts, and applied remedially, such statutes are to be given a liberal construction. Moreover, the Court has often stated

that 'a remedial statute [a licensing statute is remedial] should be liberally construed in order to effectuate its purpose.' [S.C. Dept. of Mental Health v. Hanna](#), 270 S.C. 210, 241 S.E.2d 563.

- 2 The word 'maintenance' normally connotes 'food, clothing and medical care.' 26 [Words and Phrases](#), 'Maintenance'. The concept of 'housing' is, of course, self-evident.
- 3 It should be mentioned that § 44-23-10(25), which defines 'mentally retarded person' uses the word 'treatment', as defined by § 44-23-10(11). Since the definition of 'mentally retarded person' in § 44-23-10(25) is virtually identical to the one found in Chapter 21, it could be argued that § 44-20-10(11) is the definition of 'treatment' intended here, despite its apparent inapplicability to Chapter 21.
- 4 See, e.g., [Wyatt v. Stickney](#), 344 F.Supp. 387 (D.Ala. 1974); [Gary W. v. La.](#), 437 F.Supp. 1209 (E.D.La. 1976).
- 5 Even this construction is not without flaws. To equate 'treatment', as used here, with 'habilitation' could render the former word surplusage, since § 44-21-510 enumerates in express terms, 'education', 'training' and 'care', the basic cornerstones of the habilitation process. Even so, the legislative intent is controlling. [Brunner v. Smith](#), 188 S.C. 75, 198 S.E. 184.
- 6 However, the unclear nature of the facts makes it impossible to answer this question definitively. For (cont'd on p. 6) example, your factual statement notes that '[i]n those instances where the client . . . has been suffering from a temporary mental disorientation, attempts have been and are made to provide interim assistance until the client has recovered, and/or a more lucrative employment situation can be secured.' It is not at all clear if there is here being afforded any 'treatment' in the medical sense. I will assume there is not.
- 7 The word 'care' about which you also specifically inquire, is likewise an extremely broad term, generally meaning 'charge', 'oversight' or 'responsibility for safety'. Again, it cannot be ascertained with certainty that 'care' is being provided the mentally retarded at Piedmont. The 'supervision' alluded to certainly might constitute 'care', as well might 'the interim assistance to the client'. In view of the resolution of the thrust of your question on other grounds, there is again no need to attempt to define 'care' for purposes of § 44-21-510 or speculate upon the applicability of Piedmont's situation to that definition.
- 8 It must be emphasized that there is some hesitancy in reaching this conclusion, not so much based upon the construction of §44-21-510, as upon the difficulty in applying the facts presented to that construction. For example, it is not clear the degree of instruction which Piedmont is carrying out in its goal of assisting 'both physically and mentally handicapped persons gain meaningful employment at their particular level of ability.' Nor is the 'supervision' described in detail. Likewise, the 'interim assistance' rendered the client who 'has been suffering from a temporary mental disorientation' is not detailed.
- 9 There would appear to be no question that the facility (Piedmont) is being operated at least 'in part' for (cont'd on p. 9) the 'mentally retarded'. See, § 44-21-510; see also, accompanying statistics in your factual summary, where the large percentage of mentally retarded clients served by Piedmont is well documented. Moreover, Piedmont's admitted objective is to 'assist both physically and mentally handicapped persons gain meaningful employment at their particular level of ability.' (emphasis added).
- 10 Although never explicitly stated, it is reasonable to assume that in order to assist mentally retarded clients 'gain meaningful employment at their particular level of ability', Piedmont's goal, necessarily there would occur some basic training and provision of industrial skills, as was the case in [School Lane Hills](#), *supra*. Such an assumption is, of course, greatly buttressed by the fact that the Department of Labor has certified Piedmont as a 'sheltered workshop'.

1982 WL 189329 (S.C.A.G.)