



ALAN WILSON
ATTORNEY GENERAL

November 30, 2017

The Hon. Mia McLeod
South Carolina Senate
PO Box 142
Columbia, SC 29202

Dear Senator McLeod:

We received your request seeking an opinion regarding trespassing on public school property. The following opinion sets out our understanding of your question and our response.

Issue:

Your opinion request forwards to us correspondence from a constituent. We understand this correspondence to contain two essential questions: (1) whether the statement of the law related to trespassing on public school property contained in a February 17, 2009 opinion of this Office remains an accurate statement of the law; and (2) whether the trustees of a school district may effectively delegate to an employee their powers under the trespass laws of this state on public school property.

Law/Analysis:

1. Statement of the Law of Trespass on Public School Property

First, your constituent cites an opinion of this Office, *Op. S.C. Att'y Gen.*, 2009 WL 580552 (February 17, 2009), where we discussed the law of trespass and the application of S.C. Code Ann. § 16-11-620 in the context of public school property. We understand that the question relates to the portion of the opinion which we quote here:

In its decision in *State v. Hanapole*, 255 S.C. 258, 178 S.E.2d 247 (1970), the State Supreme Court ruled that Section 16-11-620 applies only to private property and has no applicability to public property. In that case, the Court further stated that since the trespass statutes "...applies only to private property, a conviction thereunder for an alleged trespass upon public property is not warranted and cannot be sustained." *Ibid.*

[The requestor] referenced that in its decision in the case of *In the Interest of Joseph B.*, 278 S.C. 502, 299 S.E.2d 331 (1983), the Court cited its decision in *Hanapole* but indicated that its holding would not apply to public schools. The basis for its decision were the provisions of S.C. Code Ann. § 16-11-530 which state in part:

[f]or the purpose of determining...whether or not there has been a trespass upon [school] property as this offense is defined in § 16-11-600 and for all prosecutions under...other statutes of a like nature, the trustees of the respective school districts in this State in their official capacity shall be deemed to be the owners and possessors of all school property. (emphasis added).

299 S.E.2d at 332. Therefore, the court ruled that

...for purposes of a prosecution for trespass under section 16-11-620, public school land is "owned and possessed" by the respective school district trustees pursuant to section 16-11-530. In other words, a trespass upon school lands is a trespass "on the premises of another" as proscribed by section 16-11-620 . . . Even though public school land is owned by a political subdivision, it lacks the hallmarks which attend other property of the public. It is not devoted to the use of the entire public nor is there a universal right of access to it.

Ibid. As noted in an opinion of this office dated May 5, 1998, consistent with Section 16-11-530, "[p]ublic school land is owned and possessed by the respective school district and does not satisfy the traditional characteristics of a public place. Thus, public school property qualifies as 'premises of another.'"

Op. S.C. Att'y Gen., 2009 WL 580552 (February 17, 2009).

"Traditionally, this Office does not overrule a prior opinion unless there has been a change in the law or where there is clear error." *Op. S.C. Att'y Gen.*, 2017 WL 1528200 (April 13, 2017) (internal citations omitted). We clarify, however, that the particular statement of law quoted above was discussed as background provided by the requestor in our 2009 opinion and was not, strictly speaking, expressed as an opinion. *See Op. S.C. Att'y Gen.*, 2009 WL 580552 (February 17, 2009) (opining on the application of Section 16-11-620 in public libraries). That said, our research has not revealed any reported cases or relevant statutory amendments which would cause us to revise this statement of the law or lead us to a different conclusion. Therefore,

we opine that this quoted text is an accurate statement of the law in South Carolina. *See In the Interest of Joseph B.*, 278 S.C. 502, 299 S.E.2d 331 (1983); *see also* S.C. Code Ann. § 16-11-620 (2015).

2. Delegation of the Powers of School Board Trustees With Respect to Trespass Laws

Second, your constituent asks whether the powers of the trustees under the trespass laws of this state can effectively be delegated by the trustees of a school district to an employee. We opine here that they can. *See* S.C. Code Ann. § 16-11-620 (2015). Section 16-11-620 states in relevant part:

Any person who, without legal cause or good excuse, enters into the dwelling house, place of business, or on the premises of another person after having been warned not to do so or any person who, having entered into the dwelling house, place of business, or on the premises of another person without having been warned fails and refuses, without good cause or good excuse, to leave immediately upon being ordered or requested to do so by the person in possession or his agent or representative shall, on conviction, be fined not more than two hundred dollars or be imprisoned for not more than thirty days.

S.C. Code Ann. § 16-11-620 (2015) (emphasis added).

Our research has not revealed any reported South Carolina case where a criminal defendant challenged a conviction for a violation of Section 16-11-620 on the basis that a school employee as opposed to a member of the school board of trustees ordered or requested that a trespasser leave the property. Therefore, a court faced with this question most likely would resort to the rules of statutory construction to resolve it. *See discussion, infra*. As this Office has previously opined:

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S., E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

Op. S.C. Att'y Gen., 2005 WL 1983358 (July 14, 2005). Additionally, "[t]he rules of statutory construction developed by our Supreme Court establish that a criminal statute must be strictly construed against the state and any ambiguity or doubt or uncertainty must be resolved in favor

of the defendant." *Op. S.C. Att'y Gen.*, 1983 WL 182044 (November 2, 1983) (citing *State v. Germany*, 216 S.C. 182, 57 S.E.2d 165 (1950); *State v. Lewis*, 141 S.C. 483, 86 S.E. 1057 (1927)). The South Carolina Supreme Court also has held that:

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect.

State ex rel. McLeod v. Montgomery, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (quoting *Stackhouse v. County Board*, 86 S.C. 419, 68 S.E. 561 (1910)).

Turning to the text of Section 16-11-620, we highlight here that the plain language of this criminal statute expressly contemplates action against a trespasser by an "agent or representative" of the person in possession of the property who orders or requests that the trespasser leave. *Id.*; *cf.* S.C. Code Ann. § 16-11-600 (2015) (criminalizing entry "after notice from the owner or tenant" of property without reference to any agent). Moreover, Section 16-11-620 simply prohibits entry "on the premises of another person after having been warned not to do so," and does not place the burden upon any specific individual to make that warning. *See id.* For these reasons, we believe that a court would conclude that the most reasonable construction of Section 16-11-620 when read as a whole permits an agent or representative of the school board to effectively place an individual on trespass notice from public school property. This construction also avoids the absurd result that would require the trustees to personally police the school grounds against trespassers where other executive, administrative, and security functions routinely are delegated to various district employees, school resource officers, and private security guards. *See State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) ("[C]ourts will reject [a] plainly absurd that . . . could not possibly have been intended by the Legislature . . .").

Our conclusion here is consistent with a prior 2013 opinion of this Office where we noted that "our courts have upheld convictions under § 16-11-620 where the person giving a trespass notice was . . . the manager or employee of a business exercising control or custody over the commercial property." *Op. S.C. Att'y Gen.*, 2013 WL 3133638 (June 5, 2013) (citing *Jackson v. City of Abbeville*, 366 S.C. 662, 623 S.E.2d 656 (Ct. App. 2005) (attendant at convenience store ordered patron to leave premises); *Bryant v. City of Cayce*, 332 F. App'x 129 (4th Cir. 2009) (hotel manager ordered guest to leave premises); *Wright v. United Parcel Serv., Inc.*, 315 S.C. 521, 445 S.E.2d 657 (Ct. App. 1994) (holding UPS manager had authority under state law to order employee to leave premises)). This result also is consistent with older jurisprudence of our

state's Supreme Court related to the power of school board trustees to prevent trespass on school property. *See Craig v. Bell*, 211 S.C. 473, 46 S.E.2d 52 (1948). In the 1948 case of *Craig v. Bell* the Court considered a challenge by a taxpayer to the propriety of the several actions by a school board, including the construction of a residence for the superintendent on the grounds of a particular high school. *Id.* at 486, 46 S.E.2d at 58. Our Supreme Court upheld the action as a proper exercise of the powers of the school board and opined:

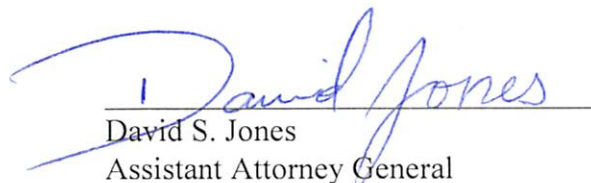
This school is located outside of the corporate limits of the Town of Williston, has no municipal police protection, and is the subject of constant trespass and depredation upon the school property. The purpose of the board in having the superintendent reside on the grounds is to have him there to keep an oversight over and to protect the property of the district from these trespassers. In my opinion this is a proper school purpose, and within the implied powers of the school board.

Id. (emphasis added). While the decision of the Court in this taxpayer challenge case is not dispositive of the question presented in your opinion request, we do believe that it provides additional support for our conclusion here that the trustees of a school district can effectively empower their agents to prevent trespass upon public school property. *See id.*

Conclusion:

In conclusion, for the reasons set out above, it is the opinion of this Office that (1) the statement of the law related to the application of Section 16-11-620 to trespassing upon public school property contained *Op. S.C. Att'y Gen.*, 2009 WL 580552 (February 17, 2009) and quoted above is an accurate statement of the law in South Carolina; and (2) a court most likely would conclude that the trustees of a school district may effectively delegate to an employee their powers under the trespass laws of this state on public school property.¹

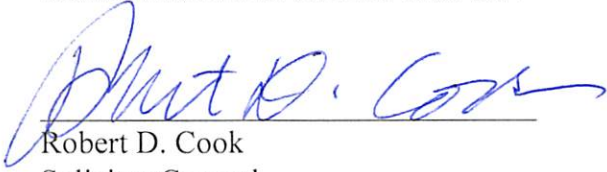
Sincerely,


David S. Jones
Assistant Attorney General

¹ This opinion should be understood in the context of the general questions presented and with the caveat that other bodies of law might apply in particular instances such that an individual would in fact have "legal cause or good excuse" for entry upon property as contemplated by Section 16-11-620. *See* S.C. Code Ann. § 16-11-620 (2015).

Senator Mia McLeod
Page 6
November 30, 2017

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook", is written over a horizontal line. The signature is fluid and cursive.

Robert D. Cook
Solicitor General