



ALAN WILSON
ATTORNEY GENERAL

February 16, 2018

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

Dear Senator McLeod:

We received your request seeking a clarification of our opinion issued on November 30, 2017 in response to your question 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 following up on our November 30 opinion (*Op. S.C. Att'y Gen.*, 2017 WL 6403325 (November 30, 2017)) which asks that we clarify "whether a public entity that is composed of elected officials can delegate its authority to [exercise its rights under state trespass laws] to a person who is not an elected official."

Law/Analysis:

It is the opinion of this Office that a court most likely would conclude that a school board of trustees which is composed of elected officials can delegate its authority to exercise its rights under South Carolina trespass laws to a person who is not an elected official. We believe that our November 30, 2017 opinion is dispositive of this question, but in order to be as responsive as possible to your request we take this opportunity to clarify our understanding of the applicable precedent in this area. This opinion should be read in conjunction with that prior opinion for a fuller discussion of the underlying question.

Your constituent seeks clarification of our reliance upon South Carolina precedent which he describes as examples of "enforcement of trespass laws by private entities not public entities" where "employees of the business [are] acting to protect the business property." We understand his question to focus on the distinction between commercial property under the control of a private corporation, and public property which typically is held open to all persons. *Cf. State v. Hanapole*, 255 S.C. 258, 178 S.E.2d 247 (1970) (holding that S.C. Code Ann. § 16-11-620 applies only to private property).

In response, we note that in addition to cases involving commercial property in our prior opinion to you, that opinion also referenced the 1983 South Carolina Supreme Court decision *In the Interest of Joseph B.*, where the Court concluded that "a trespass upon school lands is a trespass 'on the premises of another' as proscribed by Section 16-11-620." *In the Interest of Joseph B.*, 278 S.C. 502, 299 S.E.2d 331 (1983). This ruling expressly distinguished a prior South Carolina Supreme Court decision *State v. Hanapole*, 255 S.C. 258, 178 S.E.2d 247 (1970), wherein the Court overturned a conviction for trespass under Section 16-11-620 at a public airport on the basis that Section 16-11-620 "applies only to private property." *In the Interest of Joseph B.*, 278 S.C. at 503, 299 S.E.2d at 331. By contrast, the Court in *In the Interest of Joseph B.* stated that it "discount[ed] the seeming anomaly of the characterization of public school lands as private property" in upholding a conviction under the same code section. *Id.* at 504, 299 S.E.2d at 331 (emphasis added).

Based upon this characterization of public school lands as private property discussed in *In the Interest of Joseph B.*, and supported by the distinction of *State v. Hanapole* in that same opinion, we believe that a South Carolina court would conclude that Section 16-11-620 applies to school property together with the related jurisprudence, including jurisprudence which considered cases arising from trespasses on private commercial property. *See id.* Such cases routinely 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) (internal citations omitted). Consistent with this long line of cases, we believe that a court would conclude that an agent of the school exercising control or custody over the school property also could give such notice. *See Op. S.C. Att'y Gen.*, 2017 WL 6403325 (November 30, 2017). Moreover, even if a court were to conclude that this line of cases were inapplicable to your constituent's question, we believe that the court nevertheless would conclude that this result still is the most consistent with the plain language of Section 16-11-620, which defines trespass in part as failing to leave after "being ordered or requested to do so by the person in possession or his agent or representative." S.C. Code Ann. § 16-11-620 (2015) (emphasis added). In other words, the plain language of Section 16-11-620 expressly contemplates that some authorized person other than the owner of the property has the same power as the owner of the property to give notice to trespassers. *Id.*

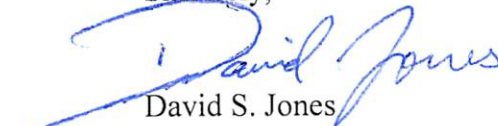
We understand that your constituent might believe that the law applicable to trespass on private property is or should be distinct from the law which would apply to "a [school] board delegating its responsibilities to a non-board member" for the purposes of trespass enforcement. However, it appears that the South Carolina Supreme Court does not share this view. *See In the Interest of Joseph B.*, 278 S.C. 502, 299 S.E.2d 331 (1983). Moreover, we reiterate that it would be patently absurd to "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." *Op. S.C. Att'y Gen.*, 2017 WL 6403325 (November 30, 2017) (citing *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) ("[C]ourts will reject [a statutory construction] when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature")). Such absurd results are disfavored in our law, and we believe a court would avoid such a result, especially when the plain language of Section 16-11-620 and related jurisprudence countenance against it. *See discussion, supra.*

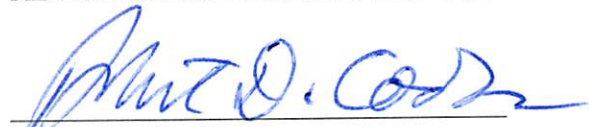
Conclusion:

In conclusion, for the reasons set out above, we affirm the prior opinion of our Office to you dated November 30, 2017 and opine that a court most likely would conclude that a school board of trustees which is composed of elected officials can delegate its authority to exercise its rights under South Carolina trespass laws to a person who is not an elected official.

Sincerely,


David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General