



ALAN WILSON
ATTORNEY GENERAL

December 4, 2018

The Honorable Randy E. Newman, Jr., Esquire
Solicitor, Sixth Judicial Circuit
P.O. Box 607
Lancaster, SC 29721

Dear Solicitor Newman:

This Office received your letter dated November 16, 2018 requesting a legal opinion. The following is this Office's understanding of your questions and our opinion based on that understanding.

Issue (as quoted from your letter):

"Per our conversation, I am requesting an Attorney General's opinion on the following. SC code section 59-24-60 requires school officials to contact law enforcement when criminal conduct occurs. "In addition to other provisions required by law or by regulation of the State Board of Education, school administrators must contact law enforcement authorities immediately upon notice that a person is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person or his property as defined in local board policy." Section 59-63-335 states that failure to report "shall subject the administrator and the school district to liability for payment of a party's attorney's fees and the costs associated with an action to seek a writ of mandamus to compel the administrator and school district to comply with Section 59-24-60." I have reviewed the School policy and it refers to section 59-24-60. I can make that available to you if needed.

Lewisville Middle School contacted the Chester County Sheriff's Office in reference to student with a hit list earlier in September. No list was found, and no charges were made. On October 24 the same student turned in a completed assignment to a teacher. On that assignment, the student made some violent drawings depicting a shooting. The teacher reported the incident to the principal and the incident was not reported to Law Enforcement. After no report was made, the teacher took it upon herself to contact law enforcement and she was reprimanded for doing so. The student was ultimately charged with making threats.

I feel that Section 59-24-60 places a duty on school administrators to contact Law Enforcement in the event of a threat. I also feel that reprimanding a teacher for reporting such events is not only improper, but it may deter others from reporting similar events.

Does a school district or school official have a duty to report possible threats to local law enforcement, and if so, what is the penalty?"

Law/Analysis:

I. Immediate Mandatory Reporting by School Administrators

Per your request and as you are aware, as a part of the Attorney General's statutory duties, this Office advises Solicitors regarding their work. S.C. Code Ann. § 1-7-100. We appreciate your concern in voicing this matter and seeking our legal opinion. As you quote in your letter, South Carolina Code § 59-24-60 reads as follows:

In addition to other provisions required by law or by regulation of the State Board of Education, school administrators must contact law enforcement authorities immediately upon notice that a person is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person or his property as defined in local board policy.

S.C. Code Ann. § 59-24-60 (1976 Code, as amended) (emphasis added). We believe, similar to the mandatory reporting of child abuse for teachers and administrators found in South Carolina Code Ann. § 63-7-310, a court will determine this statutory directive is mandatory not permissive. This Office has previously stated regarding "must" that:

Use of the term 'must' may be construed as 'shall.' See Moore v. Waters, 148 S.C. 326, 146 S.E. 92 (1928), and cases in 27A Words and Phrases, 'Must' p. 649 et seq. Where statutes use the terms 'must' or 'shall,' such terms connote mandatory compliance with the statutes. 2A Sutherland Statutory Construction § 57.03.

Ops. S.C. Att'y Gen., 2016 WL 7425911, at *3 (S.C.A.G. Dec. 9, 2016) (quoting 2016 WL 4917034 (S.C.A.G. Sept. 1, 2016)). As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the General Assembly and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the Legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). The dominant factor concerning statutory construction is the intent of the Legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)). Ultimately, we believe a court will find the intent of this statute is to prompt an immediate law enforcement investigation for the purpose of protecting children, school officials, and the community at-large from harm. Additionally, we believe a court will find that school administrators shall comply with this statute, just like the mandatory child abuse reporting statute found in South Carolina Code Ann. § 63-7-310, in order to protect children and others from harm.

It is also unlawful for a person to “deliver or convey to a public official or to a teacher... any letter or paper, writing, print, missive, document ... which contains a threat to the life of or to inflict bodily harm upon the public official, teacher, or principal, or members of his immediate family if the threat is directly related to the public official’s, teacher’s, or principal’s professional responsibilities.” S.C. Code Ann. § 16-3-1040 (1976 Code, as amended) (emphasis added). As you are likely aware, the regulation of public schools is done so pursuant to the laws and the policing power of the State and as such, a court would likely determine this statute and the statutes you reference to be authorized according to the policing power of the State. See, e.g., S.C. Const. art. XI, §§ 1, 3; Ops. S.C. Att’y Gen., 1963 WL 11898 (S.C.A.G. January 17, 1963); 1970 WL 17198 (January 20, 1970). We also note this Office issued an opinion on December 1, 2005 on the same statute you ask about (S.C. Code Ann. § 59-24-60) that concludes, among other things, “the phrase ‘as defined in local board policy’ is limited in applicability to the phrase ‘his property.’” Op. S.C. Att’y Gen., 2005 WL 3352847 (S.C.A.G. December 1, 2005); see also Op. S.C. Att’y Gen., 2010 WL 2678697 (S.C.A.G. June 28, 2010). This Office also opined regarding South Carolina Code Ann. § 59-24-60 and § 59-63-330 that it is the duty of law enforcement to investigate activity that could be determined to be criminal and that a school district is “without authority to limit law enforcement in the investigation of crimes on school grounds.” Ops. S.C. Att’y Gen., 2010 WL 2678697 (S.C.A.G. June 28, 2010); 2012 WL 440540 (S.C.A.G. February 6, 2012). Thus, we believe a court would conclude that school administrators have a mandatory obligation to immediately report to law enforcement “activity which may result or results in injury or serious threat of injury” pursuant to South Carolina Code Ann. § 59-24-60 for investigation. (Emphasis added).

II. Reporting to the South Carolina Department of Education

In addition to the immediate and mandatory reporting to law enforcement, school administrators must also report information on “school-related crime” to the South Carolina Department of Education quarterly. S.C. Code Ann. § 59-63-330. The Department of Education then must forward that information to this Office. Id. Additionally, the State Board of Education has the statutory task of promulgating regulations “necessary to enforce the provisions of” the mandatory reporting by school officials. S.C. Code Ann. § 59-63-340. Furthermore, South Carolina law requires that the forms contain the same information required by Federal law in the “No Child Left Behind Act” such as “reports on persistently dangerous schools and on the frequency, seriousness, and incidence of violence and drug-related offenses resulting in suspensions and expulsions in elementary and secondary schools.” S.C. Code Ann. § 59-63-333.

III. Reporting to the South Carolina Attorney General

Law enforcement must contact this Office’s “school safety phone line” as soon as “any felony, assault and battery of a high and aggravated nature, crime involving a weapon, or drug offense is committed on school property or at a school-sanctioned or school-sponsored activity or any crime reported pursuant to Section 59-24-60.” S.C. Code Ann. § 59-63-350. However, the “school safety phone line” is not a separate phone number but law enforcement must contact this Office nevertheless and may use our general line at (803)734-3970. Moreover, this Office is tasked with monitoring “all reported school crimes.” S.C. Code Ann. § 59-63-360.

IV. Penalties for Failure to Report by School Administrators

South Carolina law addresses a penalty against the administrator and the school district as follows:

Failure of a school administrator to report criminal conduct as set forth in Section 59-24-60 or failure to report information concerning school-related crime pursuant to Section 59-63-330 shall subject the administrator and the school district to liability for payment of a party's attorney's fees and the costs associated with an action to seek a writ of mandamus to compel the administrator and school district to comply with Section 59-24-60 or 59-63-330.

S.C. Code Ann. § 59-63-335 (emphasis added). As to the repercussions for the failure to report, it is a violation of the law for “school administrators” not to “immediately contact law enforcement ... upon notice that a person is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person or his property as defined in local board policy” in addition to the requirement to report information as required by the Department of Education pursuant to South Carolina Code Ann. § 59-63-333, § 59-63-335 and other law or regulation. Certainly, the administrator and school district are subject to a writ of mandamus if issued by the court in addition to the payment of attorney fees for the failure of a school administrator to report criminal conduct or a school-related crime pursuant to § 59-63-335. We believe a court will determine that the Department of Education may issue a public reprimand against the school administrators or other parties for failure to report a crime against the laws of this State or the United States. S.C. Code of Regulations 43-58. This Office also believes a court will find the Department of Education may issue other punishments for failure to comply with reporting within its specific statutory authority. S.C. Code Ann. § 59-63-330; Op. S.C. Att’y Gen., 1970 WL 17198 (S.C.A.G. January 20, 1970) (“the South Carolina State Board of Education may exercise only those powers expressly conferred upon it or necessarily incidental to the powers”). Additionally, a school administrator or other person required to report pursuant to § 59-24-60 or § 59-63-330 may be reprimanded or otherwise disciplined by his or her authority, but we believe a court will determine that a violation of § 59-63-335 is not a crime since the General Assembly did not include criminal penalties within the statute nor did it list it as a crime elsewhere within the South Carolina Code of Laws. See, e.g., S.C. Code Ann. § 16-1-100; Hudson v. United States, 118 S.Ct. 488 (1997).

V. Immunity for a Teacher Who Reports in Good Faith to Law Enforcement

State law specifically grants the reporter of a “person affiliated with a school in an official capacity” immunity from civil liability and criminal prosecution when reporting a “school-related crime in good faith.” S.C. Code Ann. § 59-63-380. While the statute does not go as far as granting immunity from retaliation by the governing authority of the school, we believe the legislative intent of § 59-63-380 is to protect the person reporting a “school-related crime.” As you are aware, the cardinal rule of statutory construction is to ascertain the intent of the General Assembly and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the Legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute’s interpretation must be

“practical, reasonable, and fair” and consistent with the purpose, plan and reasoning behind its making. Id. at 816. The dominant factor concerning statutory construction is the intent of the Legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)). We believe a court will find the legislative intent of § 59-63-380 is to protect the person reporting a “school-related crime.” Thus, we believe a teacher reporting a school crime or an instance where a student “is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person” to law enforcement should be granted immunity from prosecution, reprimand and retaliation from the State or any of its political subdivisions (including the School Board, district or Department of Education) for such a report made in good faith. To do otherwise would discourage reporting made in good faith and would contradict the legislative intent of § 59-63-380. Furthermore, a teacher who is the Victim of a threat (such as found in South Carolina Code Ann. § 16-3-1040) is entitled to all rights as the Victim of a crime, including those within the South Carolina Victims’ Bill of Rights such as to “be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process.” S.C. Const. art I, § 24(A)(1). Additionally, the teacher may have standing to bring an action against the school district as a whistleblower pursuant to South Carolina Code § 8-27-10 *et seq.*

Conclusion:

Yes, it is our opinion that based on the legislative intent of § 59-63-380 to protect the person reporting a “school-related crime,” we agree with you and believe a court will find that that South Carolina Code Ann. § 59-24-60 places a duty on school administrators to contact law enforcement immediately in the event of a threat (such as found in South Carolina Code Ann. § 16-3-1040 “to take the life of or to inflict bodily harm” to a “public official or to a teacher or principal”) and that reprimanding a teacher for reporting such event in good faith is not only improper, but it may deter others from reporting similar events. See, e.g., S.C. Code Ann. § 59-63-320, § 59-63-330, et seq. It is also our opinion that based on the legislative intent of § 59-63-380 to protect the person reporting a “school-related crime,” we believe a teacher, as a “person affiliated with a school in an official capacity,” reporting in good faith a school crime or potential school crime to law enforcement is immune from prosecution and civil liability for the report (according to § 59-63-380) and should be immune from reprimand and retaliation from the State or any of its political subdivisions (including the School Board, district or Department of Education) for such a report made in good faith. S.C. Code Ann. § 59-63-380. Additionally, a teacher who is the Victim of a threat (such as found in South Carolina Code Ann. § 16-3-1040) is entitled to all rights as the Victim of a crime, including those within the South Carolina Victims’ Bill of Rights such as to “be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process.” S.C. Const. art I, § 24(A)(1). Additionally, the teacher may have standing to bring an action against the school district as a whistleblower pursuant to South Carolina Code § 8-27-10 *et seq.*

This Office believes a court will determine that what constitutes behavior that would require “school administrators” to “contact law enforcement authorities immediately” pursuant to South Carolina Code Ann. § 59-24-60 (as “notice that a person is engaging or has engaged in activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person or his property”) should be determined on a “case-by-case” basis, including, but not limited to, factors such as the age of the student, prior conduct by the

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student, and, as in the case you describe, whether the teacher or other “person affiliated with a school in an official capacity” and/or the school administrator believe in good faith there is criminal conduct such as a credible threat “to take the life of or to inflict bodily harm” to a “public official or to a teacher or principal” (pursuant to § 16-3-1040 or other law). We also want to emphasize it is the duty of law enforcement to investigate possible criminal activity including potential school-related crimes and that a school district is “without authority to limit law enforcement in the investigation of crimes on school grounds.” Ops. S.C. Att’y Gen., 2010 WL 2678697 (S.C.A.G. June 28, 2010); 2012 WL 440540 (S.C.A.G. February 6, 2012).

Furthermore, we believe, the administrator and school district are subject to a writ of mandamus if granted by the court in addition to the payment of attorney fees for the failure of a school administrator to report criminal conduct or a school-related crime pursuant to South Carolina Code Ann. § 59-63-335. Additionally, a school administrator or other person required to report pursuant to § 59-24-60 or § 59-63-330 may be reprimanded or otherwise disciplined by his or her authority, but we believe a court will determine that a violation of § 59-63-335 is not a crime since the General Assembly did not include criminal penalties within the statute nor did it list it as a crime elsewhere within the South Carolina Code of Laws. See, e.g., S.C. Code Ann. § 16-1-100; Hudson v. United States, 118 S.Ct. 488 (1997). We also believe a court will find the scope of § 59-63-380 may differ slightly from § 59-63-330 as the former lists a “school-related crime” versus “activities on school property or at a school sanctioned or sponsored activity which may result or results in injury or serious threat of injury to the person or to another person or his property” as described in the latter. Moreover, it appears there may be an explanation for confusion on reporting a threat (such as found in South Carolina Code Ann. § 16-3-1040) as S.C. Code of Regulations 43-279 in IV. Minimum Standards currently lists threats as Level II Disruptive Conduct but does not specifically also list it as Criminal Conduct in Level III even though S.C. Code Ann. § 16-3-1040 (threatening the life, person or immediate family of a teacher, principal, public official, public employee)¹ is a crime and certainly a school-related crime. However, we believe a report made in good faith regarding a “school related crime” could include both those activities listed § 59-63-330 that could be charged as a crime and violations of § 16-3-1040 regardless of the definitions of criminal conduct in South Carolina Code of Regulations 43-279. We would be remiss if we not did clarify that we believe and also believe a court would distinguish that two elementary students in a minor tussle on the playground would not be charged with nor would constitute a criminal violation whereas, like the example you gave in your letter, a minor old enough to operate a weapon submitting a “violent drawing depicting a shooting” that was interpreted as a credible threat to the teacher, faculty or others could constitute a crime, and the minor could be charged with a crime, especially where there was a history of concerning behavior. See, e.g., S.C. Code Ann. § 63-19-20(1), § 16-3-1040.

Nevertheless, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code Ann. § 15-53-20. If it is later determined otherwise, or if you have any additional questions or related issues, please let us know.

¹ Please see the statute S.C. Code Ann. § 16-3-1040 for the full text.

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Sincerely,



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REVIEWED AND APPROVED BY:



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