



ALAN WILSON
ATTORNEY GENERAL

May 21, 2019

Chief Calvin E. Collins
City of Bishopville Police Department
113 E. Council St.
Bishopville, SC 29010

Dear Chief Collins:

We received your request seeking an opinion on the application of South Carolina's school trespass statute to administrative buildings owned by the school district where school board meetings are held. This opinion sets out our Office's understanding of your question and our response.

Issue (as quoted from your letter):

The Lee County School District owns several buildings within the territorial limits of the City of Bishopville, including the administrative building wherein meetings of the Lee County School Board are held.

At a recent meeting of the Lee County School Board, one or more individuals conducted themselves in a manner the Board found to range from disorderly to threatening. As a result, one or more individuals have been served with a written warning not to come onto certain premises of the Lee County School District as contemplated by S.C. Code § 16-11-620.

The Police Department of the City of Bishopville is highly sensitive to school safety issues as they relate to students, employees and the Board itself. The Police Department intends to respond fully to any need of the School District when it comes to safety and protection of the public.

I do recognize that school property may arguably be a public building or premises. To that extent, and out of an abundance of precaution, I seek your opinion for clarification as to whether a prosecution for violation of the above code section would be a proper exercise of authority under these circumstances.

Law/Analysis:

It is the opinion of this Office that a court would conclude that South Carolina trespass law generally encompasses the administrative property of a public school just as it would any other portion of the premises. *See* S.C. Code Ann. § 16-11-620 (2015); *cf. In the Interest of Joseph B.*, 278 S.C. 502, 299 S.E.2d 331 (1983). However, when a member of the public is present at a school board meeting which is open to the public as required by the FOIA, a court most likely would conclude that person has “legal cause or good excuse” to be present as contemplated in Section 16-11-620 of the South Carolina Code, and if necessary that person may be removed consistent with the provisions of the FOIA. *See* S.C. Code Ann. § 30-4-70(d) (2007).

1. Law of Trespass Statute on Public School Property

Your request letter references Section 16-11-620, which reads 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 . . . 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 [is guilty of a misdemeanor].

S.C. Code Ann. § 16-11-620 (2015). South Carolina law also provides that “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” for the purpose of determining whether a trespass law has been violated. S.C. Code Ann. § 16-11-530 (2015).

Our Office has opined on prior occasions that “Section 16-11-620 applies to school property.” *Op. S.C. Att’y Gen.*, 2018 WL 1160083 (February 16, 2018). We reached this conclusion consistent with the opinion of the South Carolina Supreme Court in *In the Interest of Joseph B.*, 278 S.C. 502, 299 S.E.2d 331 (1983), where our State’s highest Court held:

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. *Cf. Hanapole.*

We conclude sections 16–11–530 and 16–11–620 together sustain a prosecution for trespass to public school grounds.

278 S.C. at 504, 299 S.E.2d at 332. We understand that you are familiar with some of the prior opinions of this Office on trespassing on public school property, including *Ops. S.C. Att’y Gen.*, 2018 WL 1160083 (February 16, 2018) and 2017 WL 6403325 (November 30, 2017). Our reasoning and conclusions are developed more fully in those opinions and this opinion should be read in the context of those prior opinions.

For the purposes of this opinion, we note that text of the Section 16-11-530 does not distinguish between, e.g., academic classrooms and administrative buildings. Instead, the Legislature established that the school trustees are “deemed to be the owners and possessors of all school property” in order to determine whether there has been a trespass on “any school property.” S.C. Code Ann. § 16-11-530 (2015). The plain and unambiguous meaning of this language categorically includes all public school property. Consistent with this language, the South Carolina Supreme Court held in *In the Interest of Joseph B.* that Section 16-11-620 applies in prosecutions for trespass upon “public school land” and “public school grounds.” Our Office has not identified any reported South Carolina case where a trespasser sought to distinguish between certain premises of a school; however, all binding legal authority available at this time categorically include all land and buildings owned by a public school district.

Therefore, if an administrative building is “owned and possessed” by a school district, the text of Section 16-11-530 and established Supreme Court precedent generally would support a prosecution for trespass on that property under Section 16-11-620, subject to the facts of a particular case and countervailing law as applicable. We emphasize that this conclusion is offered in the abstract with respect to administrative buildings, and we turn now to the specific scenario of a school board meeting held in such a building.

2. FOIA and the Open Meeting Requirement

Based on your request letter and our telephone conversations, we also understand that your question is directed not only at the school administrative building generally, but also at the meeting of a school board specifically. In other words, if a person is placed on a general trespass notice that they are not to come onto school property, and that person nevertheless attends a public school board meeting held on that property, does attending that public meeting constitute a misdemeanor under Section 16-11-620?

Here we must reiterate that our Office's longstanding policy is to defer to magistrates in their determinations of probable cause, and to local law enforcement officers and solicitors in deciding what charges to bring and which cases to prosecute. *See, e.g., Op. S.C. Att’y Gen.*, 2017 WL 5053042 (October 24, 2017). Additionally, South Carolina law does not permit this Office to issue an opinion which attempts to supersede or reverse any order of a court or other judicial

body. *Orr v. Clyburn*, 277 S.C. 536, 290 S.E.2d 804 (1928); S.C. Const. art I, § 8; S.C. Const. art V. Any prosecution necessarily is fact-specific, and our Office consistently has recognized that, unlike a court, we cannot make adjudicate facts or make independent findings of fact in an opinion. *See, e.g., Op. S.C. Att’y Gen.*, 2003 WL 21108489 (May 5, 2003) (internal citations omitted).

The SC Freedom of Information Act requires that “[e]very meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter.” S.C. Code Ann. § 30-4-60 (2007). The FOIA also expressly includes school districts in its definition of a public body: “‘Public body’ means . . . any public or governmental body or political subdivision of the State, including . . . school districts” S.C. Code Ann. § 30-4-20(a) (2007); *see also Op. S.C. Att’y Gen.*, 2017 WL 1368244 (April 5, 2017) (“Because school districts are specifically included within the statutory definition of a public body, it is this Office’s opinion that Lexington School District One is properly classified as a public body under the FOIA”). Accordingly, any meeting of a district school board is open to the public by law unless closed for a reason permitted under the statute. *Id.*

Here we note again that Section 16-11-620 establishes the misdemeanor of trespass for a person who enters premises after being warned not to “without legal cause or good excuse.” S.C. Code Ann. § 16-11-620 (2015). It contemplates that persons placed on trespass notice might have the legal right or good cause to come on particular premises even after receiving that notice. *Id.* Conversely, “South Carolina’s FOIA was designed to guarantee the public reasonable access to certain activities of the government.” *Fowler v. Beasley*, 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996). The open meeting requirement in Section 30-4-50 is an integral component of that design. S.C. Code Ann. § 30-4-50 (2007). Furthermore, the General Assembly instructed that the FOIA “must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.” S.C. Code Ann. § 30-4-15 (2007).

For these reasons, we believe that a court faced with the scenario of a person who was placed on a general trespass notice that they are not to come onto school property but that person attends the open meeting of the school board which is held on that property, that court most likely would conclude that such a person has “legal cause or good excuse” under the FOIA to be present for that open meeting. *Cf.* S.C. Code Ann. §§ 16-11-620 (2015) & 30-4-50 (2007); *see also Fowler v. Beasley*, 322 S.C. 463, 468, 472 S.E.2d 630, 633 (1996). While this conclusion is not free from doubt, we believe this resolution of the question is faithful to the letter and spirit of both South Carolina’s trespass law and FOIA.

Finally, we note that while the FOIA requires that a meeting of a public body be open to the public, it does not absolutely preclude the removal of disorderly persons in all circumstances. Subsection 30-4-70(d) expressly provides that “This chapter does not prohibit the removal of any person who wilfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.” S.C. Code Ann. § 30-4-70(d) (2007). However, we also offer this caveat from a prior opinion of our Office:

There is a fine line between First Amendment rights of free speech and disruption of a meeting. The members of council must thus be very careful to avoid infringing upon First Amendment rights. *See Norse v. City of Santa Cruz*, 629 F.3d 966 (9th Cir. 2010) (finding that attendee of city council meeting has a First Amendment right to be free from view point discrimination; the person must actually be disruptive to warrant ejection). Thus, council must be vigilant in not abusing its power.

Op. S.C. Att’y Gen., 2016 WL 3355910 (May 31, 2016). Of course the merits of any particular ejection must be assessed according to the facts and circumstances of that particular case, and this Office cannot make findings of fact in an opinion such as this one. *See, e.g., Op. S.C. Att’y Gen.*, 2003 WL 21108489 (May 5, 2003) (internal citations omitted).

Conclusion:

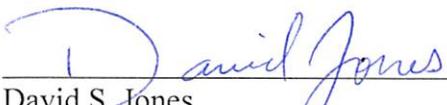
In conclusion, it is the opinion of this Office that a court would conclude that South Carolina trespass law generally encompasses the administrative property of a public school just as it would any other portion of the public school premises. *See* S.C. Code Ann. § 16-11-620 (2015); *cf. In the Interest of Joseph B.*, 278 S.C. 502, 299 S.E.2d 331 (1983). However, when a member of the public is present at a school board meeting which is open to the public as required by the FOIA, a court most likely would conclude that such a person has “legal cause or good excuse” to be present as contemplated in Section 16-11-620 of the South Carolina Code, and if necessary that person may be removed consistent with the provisions of the FOIA. *See* S.C. Code Ann. § 30-4-70(d) (2007). This conclusion is not free from doubt, but we believe this resolution of the question is faithful to the letter and spirit of both South Carolina’s trespass law and FOIA. We also reiterate that “[t]here is a fine line between First Amendment rights of free speech and disruption of a meeting,” and the merits of any particular ejection must be assessed according to the facts and circumstances of that particular case. *Ops. S.C. Att’y Gen.*, 2016 WL 3355910 (May 31, 2016), 2003 WL 21108489 (May 5, 2003).

Finally, we note that our Office’s longstanding policy is to defer to magistrates in their determinations of probable cause, and to local officers and solicitors in deciding what charges to

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bring and which cases to prosecute. This Office is not a finder of fact. As you also know, law enforcement officers and solicitors have discretion in how they allocate the limited resources that the taxpayers provide to them. That said, we are always happy to provide law enforcement officers with resources to discuss in their conversations with solicitors about what charges, if any, might be appropriate.

Sincerely,



David S. Jones
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General