



ALAN WILSON
ATTORNEY GENERAL

June 28, 2019

The Hon. Katrina F. Shealy
South Carolina Senate District 23
PO Box 142
Columbia, SC 29202

Dear Senator Shealy:

We received your request seeking an opinion on whether law enforcement and emergency medical personnel are considered “caregivers” under the Omnibus Adult Protection Act. This opinion sets out our Office's understanding of your question and our response.

Issue (as quoted from your letter):

I am writing to request an Attorney General’s opinion on whether law enforcement and emergency medical personnel are to be considered caregivers under the Omnibus Adult Protection Act while a vulnerable adult is in their custody or care.

Under SC Code § 43-35-10 (2) “Caregiver” means a person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and includes, but is not limited to, a relative, a household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.

Law/Analysis:

The determination of whether a law enforcement officer or emergency medical personnel who provides care to a vulnerable adult falls within the statutory definition of a “caregiver” under the Omnibus Adult Protection Act (the “Act”) is necessarily a fact-specific question which is beyond the scope of an opinion of this Office. *See* S.C. Code Ann. § 43-35-10(2) (2015). However, this opinion will provide you with some relevant law in order to be as responsive as possible to your question.

As stated in your letter, Section 43-35-10(2) defines a “caregiver” to mean:

[A] person who provides care to a vulnerable adult, with or without compensation, on a temporary or permanent or full or part-time basis and

includes, but is not limited to, a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility.

S.C. Code Ann. § 43-35-10(2) (2015). This defined term is found in the statutory definition of neglect in Subsection 43-35-10(6):

“Neglect” means the failure or omission of a caregiver to provide the care, goods, or services necessary to maintain the health or safety of a vulnerable adult including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services and the failure or omission has caused, or presents a substantial risk of causing, physical or mental injury to the vulnerable adult. Noncompliance with regulatory standards alone does not constitute neglect. Neglect includes the inability of a vulnerable adult, in the absence of a caretaker, to provide for his or her own health or safety which produces or could reasonably be expected to produce serious physical or psychological harm or substantial risk of death.

S.C. Code Ann. § 43-35-10(6) (2015) (emphasis added).

Reported South Carolina cases construing the Adult Protection Act often have focused on the definition of a “vulnerable adult,” rather than the definition of a “caregiver.” *See, e.g., Doe v. S.C. Dep’t of Social Services*, 407 S.C. 623, 757 S.E.2d 712 (2014). As a matter of first impression, a court faced with the question presented in your letter would construe the meaning of Subsection 43-35-10(2) according to the rules of statutory construction to give effect to the intention of the Legislature in codifying the definition. In the words of the South Carolina Supreme Court,

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.

Hodges v. Rainey, 341 S.C.79, 85, 533 S.E.2d 578, 581 (2000) (internal citations and quotations omitted).

Turning to the text of Section 43-35-10(2), the definition of a “caregiver” is inclusive of specific categories but expressly does not limit the definition to those categories. S.C. Code Ann. § 43-35-10(2) (2015) (“includes, but is not limited to . . .”). Moreover, this broad language does not contain any express exclusion. *Id.* We observe without opining that Subsection 43-35-10(2) apparently was written with a variety of other caregiving situations in mind and almost certainly was not primarily directed at law enforcement. Instead, we believe the General Assembly directed this provision of the Adult Protection Act primarily at “a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility,” meaning persons normally in a caregiving relationship as commonly understood. S.C. Code Ann. § 43-35-10(2) (2015). Conversely, we are not aware of any basis in the definitional text to exclude otherwise-qualifying persons merely because they are also a law enforcement officer or emergency medical personnel. *See id.*

However, the Omnibus Adult Protection Act also contains several provisions which demonstrate that the Act is not intended to alter or impede normal and appropriate law enforcement activities. Foremost among these is Section 43-35-90, which specifies that “[t]his article is not intended to affect in any way the authority of any agency to act under state or federal law.” S.C. Code Ann. § 43-35-90 (2015). The reference to “this article” contained in Section 43-35-90 refers to Article 1 found in Chapter 35 of Title 43, which is the same article containing the definition of a “caregiver” and other related statutes discussed in this opinion. *Cf.* S.C. Code Ann. § 43-35-10 (2015).

Additionally, the Adult Protection Act contains a discreet code section which expressly empowers law enforcement to take a vulnerable adult into protective custody under some circumstances. S.C. Code Ann. § 43-35-55 (2015). Section 43-35-55 reads in relevant part:

(A) A law enforcement officer may take a vulnerable adult in a life-threatening situation into protective custody if:

(1) there is probable cause to believe that by reason of abuse, neglect, or exploitation there exists an imminent danger to the vulnerable adult's life or physical safety;

(2) the vulnerable adult or caregiver does not consent to protective custody; and

(3) there is not time to apply for a court order.

(B) When a law enforcement officer takes protective custody of a vulnerable adult, the officer must transport the vulnerable adult to a place of

safety which must not be a facility for the detention of criminal offenders or of persons accused of crimes. The Adult Protective Services Program has custody of the vulnerable adult pending the family court hearing to determine if there is probable cause for protective custody.

(C) A vulnerable adult who is taken into protective custody by a law enforcement officer, may not be considered to have been arrested.

(D) When a law enforcement officer takes protective custody of a vulnerable adult under this section, the law enforcement officer must immediately notify the Adult Protective Services Program and the Department of Social Services in the county where the vulnerable adult was situated at the time of being taken into protective custody. . . .

S.C. Code Ann. § 43-35-55(A)-(D) (2015). Finally, the Act expressly permits law enforcement to share non-public information under certain circumstances in Section 43-35-60, which reads in full:

Unless otherwise prohibited by law, a state agency, an investigative entity, and law enforcement may share information related to an investigation conducted as a result of a report made under this chapter. Information in these investigative records must not be disclosed publicly.

S.C. Code Ann. § 43-35-60 (2015).

We bring these statutes to your attention in order to be as responsive as possible to your question and also to clarify our belief that the statutory definition of a “caregiver” apparently was intended to cover a broad variety of caregiving situations and not specifically targeted at law enforcement officers. Instead, the Act anticipated that law enforcement would be an integral resource to protect a vulnerable adult once discovered. *See* S.C. Code Ann. § 43-35-55 (2015). The responsibilities and limitations of law enforcement officers often are determined according to other bodies of law, such as constitutional limitations and qualified immunity. *See, e.g., Childress v. City of Charleston Police Dep’t*, 2015 WL 5231625 (2015) (affirmed in part, vacated in part, remanded by *Childress v. City of Charleston Police Dep’t*, 657 F.Appx 160 (2016)) (assessing the liability of municipal law enforcement officers on Fourth Amendment grounds and 42 U.S.C. § 1983 for taking plaintiff “into emergency protective custody against her will” pursuant to S.C. Code Ann. § 43-35-55 (2015)).

Conclusion:

In conclusion, the determination of whether a law enforcement officer or emergency medical personnel who provides care to a vulnerable adult falls within the statutory definition of a “caregiver” under the Omnibus Adult Protection Act (the “Act”) is necessarily a fact-specific question which is beyond the scope of an opinion of this Office. *See* S.C. Code Ann. § 43-35-10(2) (2015). For that reason, any particular case must be considered according to its individual facts and circumstances. However, this opinion has provided you with some relevant law in order to be as responsive as possible to your question.

We observe without opining that law enforcement officers typically do not “provide care” in the course of their law enforcement duties as contemplated by S.C. Code Ann. § 43-35-10(2) (2015). We believe the General Assembly directed the “caregiver” provisions of the Adult Protection Act primarily at “a relative, household member, day care personnel, adult foster home sponsor, and personnel of a public or private institution or facility,” meaning persons normally in a caregiving relationship as commonly understood. *See id.*

Sincerely,


David S. Jones
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REVIEWED AND APPROVED BY:


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