

North Carolina Attorney General Opinions:

February 14, 1986

Opinion No. 55 N.C.A.G. 086

Subject: Education; Qualified Non-Public Schools; Legality of Satellite Schools.

Requested by: Charles C. McConnell Superintendent Haywood County Schools

Question: Are parents who educate their child in a home school, which has not met the requirements of Article 39, Chapter 115C of the General Statutes but has been created as a satellite by another recognized home school, in compliance with the Compulsory Attendance Law?

Conclusion: No.

The parents of five children, one of whom has reached school age, are instructing their school-age child in their home. This school has not been recognized by the Governor's Office through its Office of Non-Public Schools as meeting the requirements of Article 39, Chapter 115C of the General Statutes. Instead, this home school has been "validated" by the operator of a home school some fifteen miles distant which has been recognized by the Office of Non-Public Schools. In effect, the operator of the recognized home school considers the unrecognized home school as a satellite. You are responsible for enforcement of the Compulsory Attendance Law, G.S. §115C-378, in Haywood County and have asked whether the parents educating their school-age child in the "satellite" home school are in compliance with the Compulsory Attendance Law.

The legality of home schools was established by the North Carolina Supreme Court in **Delconte v. North Carolina, 313 N.C. 384, 329 S.E. 2d 636 (1985)**. The Court there held that, under the current statutory scheme in North Carolina, there are four ways in which a child may attend school and thereby comply with our compulsory attendance laws. *Id.* at 390, 329 S.E. 2d at 640. In all four types of schools, however, the General Assembly has outlined various requirements for attendance, record keeping, standardized testing, and for "reasonable fire, health and safety inspections by State, county and municipal authorities as required by law." *E.g.*, G.S. §115C-548; §115C-549. Indeed, the Delconte Court specifically stated that our legislature has traditionally required all schools to meet "certain objective statutory standards" in order to qualify as a "school." The General Assembly, "has historically enacted and continues to enact various objective statutory criteria, or standards, which various kinds of schools must meet in order for students attending them to comport with the school attendance statutes. *Id.* at 397, 329 S.E. 2d at 645.

Despite **Delconte's holding that "the evident purpose of these recent statutes is to loosen, rather than tighten, the standards for non-public education in North Carolina," and that "the legislature obviously intended [the statutes] to make it easier, not harder, for children to be educated in non-public school settings,"** this Office is of the opinion that the legislature did not so loosen the statutory scheme as to permit one qualified non-public school to set up another. Nowhere in the statutes is the suggestion that the legislature intended to permit home schools to colonize. To the contrary, the statutes authorizing home schools still impose various requirements upon "each" school, and provide that "each" school shall make and maintain records, operate on a regular schedule, and "be subject to reasonable fire, health and safety inspections." It is apparent from the statutory requirements that the State of North Carolina, even while permitting home instruction, retains a strong and abiding interest in insuring that the quality of education for its children meets at least minimum academic standards, and that the physical plant which houses a school meets at least minimum safety standards. Obviously, were home schools permitted to colonize, or create satellites, the ability of the State effectively to inspect, supervise and control any aspects of the school would be severely impeded. Eventually, the tasks of inspection and control would become administratively impossible. Accordingly, this Office can find no authority, express or implied, for one home school to create another, separate, school.

Parents who establish a school in their home to educate their school-age children must have their home school recognized by the Office of Non-public Schools and meet the requirements of Article 39, Chapter 115C in order to meet the requirements of the Compulsory Attendance Law. Unless and until the parents in question meet these requirements it is our opinion that they are in violation of the Compulsory Attendance Law.

Lacy H. Thornburg, Attorney General, Edwin M. Speas, Jr. Special Deputy Attorney General Laura Crumpler Assistant Attorney General

August 25, 1997

Attorney General Letter

Opinion No. 323

via facsimile

The Honorable J. Russell Capps
N.C. House of Representatives
419-B, Legislative Office Building
Raleigh, North Carolina 27601-1096

RE: Advisory Opinion; Article 39 of Chapter 115C of the General Statutes; Recognition of a Home School that does not Enroll Children of Compulsory School Age

Dear Representative Capps:

You request our opinion whether the North Carolina Division of Non-Public Education must accept a notice of intent to operate a home school where the home school does not enroll any children of compulsory school attendance age. For reasons which follow, **the North Carolina Division of Non-Public Education is not required to accept a notice of intent to operate a home school where the home school does not enroll any children of compulsory school attendance age.** The reason why the notice of intent to operate such a school need not be accepted by the Division of Non-Public Education is simple. There is no reason to accept such a notice since the sole purpose of recognizing private and proprietary schools established pursuant to Article 39 of Chapter 115C of the General Statutes, which include private church schools and schools of religious charter, qualified nonpublic schools, and home schools, is to ensure that children attending those schools are in compliance with the compulsory attendance law which requires that children between the ages of seven and 16 years attend "a school."

North Carolina's basic compulsory school attendance law, N.C.G.S. § 115C-378, provides in pertinent part:

Every parent, guardian or other person in this State having charge or control of a child between the ages of seven and 16 years shall cause such child to attend school continuously for a period equal to the time which the public school to which the child is assigned shall be in session.

....

The term 'school' as used herein is defined to embrace all public schools and such nonpublic schools as have teachers and curricula that are approved by the State Board of Education.

All nonpublic schools receiving and instructing children of a compulsory school age shall be required to keep such records of attendance and render such reports of the attendance of such children and maintain

such minimum curriculum standards as are required of public schools; and attendance upon such schools, if the school refuses or neglects to keep such records or to render such reports, shall not be accepted in lieu of attendance upon the public school of the district to which the child shall be assigned: Provided, that instruction in a nonpublic school shall not be regarded as meeting the requirements of the law unless the courses of instruction run concurrently with the term of the public school in the district and extend for at least as long a term. (Emphasis added).

Notwithstanding this statute, the North Carolina General Assembly has chosen to provide that attendance at any "private church schools and schools of religious charter" which meets the requirements of Part 1, Article 39, Chapter 115C, or at any "qualified nonpublic school" which meets the requirement of Part 2, Article 39, Chapter 115C, or at any "home school" which meets the requirements of Part 3, Article 39, Chapter 115C, "shall satisfy the requirements of compulsory school attendance." N.C.G.S. § 115C-548, § 115C-556, and § 115C-564.

The purpose of the General Assembly in enacting Parts 1, 2 and 3 of Article 39 of Chapter 115C was to allow children between the ages of seven and 16 years who attended these nonpublic schools to be in compliance with North Carolina's compulsory school attendance law. See, *Delconte v. North Carolina*, 313 N.C. 384 (1985).

If a home school enrolls no children of compulsory school attendance age, there is absolutely no reason for that home school to file any notice of intent to operate with the North Carolina Division of Non-Public Education. Conversely, there is no reason why the North Carolina Division of Non-Public Education must accept any notice of intent to operate a home school that does not enroll children of compulsory school attendance age.

Should you have any further questions, please advise.

Andrew A. Vanore, Jr.
Chief Deputy Attorney General

June 5, 2000

Opinion No. 466

R. Glen Peterson
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Re: Advisory Opinion; "Lose Control, Lose Your License" Legislation and Home Schools; N.C. Gen. Stat. § 20-11(n1)(1)d.2

Dear Mr. Peterson,

By memorandum dated April 28, 2000, you asked this office's opinion regarding the application of N.C. Gen. Stat. § 20-11(n1)(1)d.2. to home school students. In particular, you asked whether the application of that statute would result in a one-year loss of the driver's license or learner's permit for a home school student who used a weapon or firearm in a lawful manner under the supervision of his or her parent/guardian on the property of the parent/guardian.

It is our opinion that, in the circumstances you describe, application of the statute would not result in the loss of the student's driver's license or learner's permit.

The "primary rule of statutory construction is that the intent of the legislature controls the interpretation of a statute." *Stevenson v. Durham*, 281 N.C. 300, 303, 188 S.E.2d 281, 283 (1972). See also *State v.*

Blackstock, 314 N.C. 232, 240, 333 S.E.2d 245, 250 (1985) ("cardinal principle of statutory construction is that the intent of the legislature is controlling"). That intent is ascertained by "consider[ing] the language of the statute, the spirit of the act, and what the act seeks to accomplish." *Stevenson v. Durham*, 281 N.C. at 303, 188 S.E.2d at 283.

N.C. Gen. Stat. § 20-11(n1)(1)d.2., which becomes effective on July 1, 2000, was enacted as part of the "Lose Control, Lose Your License" legislation. N.C. Sess. Law c. 243 (1999). This legislation expressly applies to home schools. N.C. Gen. Stat. § 20-11(n1)(1)a. Generally, the legislation links the availability of driving privileges for students under 18 to their performance and conduct in school by denying driving privileges to or revoking the driving privileges of students who engage in defined "enumerated student conduct." See generally N.C. Gen. Stat. § 20-11(n1). **The legislation not only encourages students to attend school and to perform and behave well in school, but also preserves the discretion of school administrators, including home-school administrators, to decide whether and what level of discipline is appropriate in particular circumstances.**

Toward that end, N.C. Gen. Stat. § 20-11(n1)(1)d. specifically and precisely defines "enumerated student conduct" as follows:

d. Enumerated student conduct. -- One of the following behaviors that results in disciplinary action:

1. The possession or sale of an alcoholic beverage or an illegal controlled substance on school property.
2. The bringing, possession, or use on school property of a weapon or firearm that resulted in disciplinary action under G.S. 115C-391(d1) or that could have resulted in that disciplinary action if the conduct had occurred in a public school.
3. The physical assault on a teacher or other school personnel on school property.

N.C. Gen. Stat. § 20-11(n1)(1)d. (emphasis added). The statute unambiguously defines "enumerated student conduct" to be conduct which actually "results in disciplinary action." *Id.* We believe the statutory predicate of N.C. Gen. Stat. § 20-11(n1)(1)d. -- that the behavior actually "result[] in disciplinary action" -- takes precedence over the later language in the subordinate clause of N.C. Gen. Stat. § 20-11(n1)(1)d.2. The statute also defines "disciplinary action" to be "[a]n expulsion, a suspension, for more than 10 consecutive days, or an assignment to an alternative educational setting for more than 10 consecutive days." N.C. Gen. Stat. § 20-11(n1)(1)c.

Under the circumstances you have described, the parent/guardian has taken no disciplinary action; in fact, the parent has given permission for possession or use of the weapon. Thus, the conduct in question does not fulfill the statutory predicate and does not fall within the statutory definition of "enumerated student conduct" in N.C. Gen. Stat. § 20-11(n1)d. Of course, if the parent/guardian does take statutorily defined disciplinary action under appropriate circumstances, then the conduct would fall within the statutory definition of "enumerated student conduct," and the student would lose his or her driving privileges.

Therefore, it is our opinion that a student enrolled in a home school who lawfully uses a weapon on the property of the parent/guardian, with the parent/guardian's permission and under the parent/guardian's supervision, does not engage in "enumerated student conduct" which results in loss or denial of driving privileges.

Signed by:

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April 6, 1999

Opinion No. 417

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Re: Advisory Opinion; Drivers Subject to Revocation of Driving Privileges Under G.S. § 20-13.2(c1).

Dear Superintendent Ward:

On March 25, 1999, you wrote to request this office's opinion on the scope of the driving privilege revocation provisions of G.S. § 20-13.2(c1). That statute was enacted as Section 2 of 1997 N.C. Sess. Laws c. 507 entitled "An Act to Provide That Certain Students Who Drop out of School or Do Not Make Progress Toward Graduation Shall Not Be Eligible for Drivers Permits or Licenses." That section of the Act amended G.S. § 20-13.2 to provide:

(c1) The Division [of Motor Vehicles] must revoke the permit or license of a person under the age of 18 if the proper school authority notifies the Division that the person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n). Notwithstanding subsection (d) of this section, the length of revocation must last until the person's eighteenth birthday or until the Division restores the permit or license under this subsection. The Division must restore a person's permit or license before the person's eighteenth birthday, if the person submits to the Division one of the following:

- (1) A high school diploma or its equivalent.
- (2) A driving eligibility certificate as required under G.S. 20-11(n).

Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter [20 of the General Statutes].

G.S. § 20-11(n), referred to in Section 2 of the Act, was included in Section 1 of the Act. Section 1 provides:

Driving Eligibility Certificate.--A person who desires to obtain a permit or license issued under this section and who does not have a high school diploma or its equivalent must have a driving eligibility certificate. A driving eligibility certificate must meet the following conditions:

- (1) The person who is required to sign the certificate under subdivision (4) of this subsection must show that he or she has determined that one of the following requirements is met:
 - a. The person is currently enrolled in school and is making progress toward obtaining a high school diploma or its equivalent.
 - b. A substantial hardship would be placed on the person or the person's family if the person does not receive a certificate.
 - c. The person cannot make progress toward obtaining a high school diploma or its equivalent.

(2) It must be on a form approved by the Division.

(3) It must be dated within 30 days of the date the person applies for a permit or license issuable under this section.

(4) It must be signed by the applicable person named below:

- a. The principal, or the principal's designee, of the public school in which the person is enrolled.

- b. The administrator, or the administrator's designee, of the nonpublic school in which the person is enrolled.
 - c. **The person who provides the academic instruction in the home school in which the person is enrolled.**
 - d. The designee of the board of directors of the charter school in which the person is enrolled.
 - e. The president, or the president's designee, of the community college in which the person is enrolled.
- Notwithstanding any other law, the decision concerning whether a driving eligibility certificate was properly issued or improperly denied shall be appealed only as provided under the rules adopted in accordance with G.S. 115C-12(27), G.S. 115D-5(a3), or G.S. 115C-566, whichever is applicable, and may not be appealed under this Chapter.

The effective dates for the Act were set out in Section 10 which provides:

Sections 1 and 2 of this act become effective August 1, 1998. The remainder of this act is effective when it becomes law. Sections 1 and 2 of this act do not apply to any person who holds a valid North Carolina limited learner's permit issued before December 1, 1997, who holds a valid North Carolina learner's permit issued before December 1, 1997, or who is a provisional licensee and holds a valid North Carolina drivers license issued before December 1, 1997.

It is our understanding that no funds were allocated to the affected governmental agencies to implement this legislation. In practice, the local education administrative units (LEAs) are primarily responsible for administering the revocation process. First, an LEA identifies those students who fail to meet the statutory requirements for continued driving privileges. Utilizing an access code provided by DMV, the LEA then enters the pertinent information directly into DMV's computer records. The computer then generates a notice of revocation of driving privileges and DMV mails the notice to the affected student. Any appeal from the revocation lies to the LEA that entered the information in the DMV records.

As you note in your letter, the effective dates of the Act created three distinct groups of drivers under the age of 18:

Group A: Drivers who received driving privileges before December 1, 1997;

Group B: Drivers who received driving privileges after November 30, 1997 but before August 1, 1998; and

Group C: Drivers who receive driving privileges after July 31, 1998.

You have asked for this office's opinion as to how the Act is to be applied to each of these groups.

The cardinal rule of statutory construction is that legislation must be construed to accomplish the General Assembly's intent. *Sutton v. Aetna Casualty and Surety Co.*, 325 N.C. 259, 265, 280 S.E.2d 759 (1989). The best indicia of legislative intention are the language of the statute, its spirit and purpose. *Savings and Loan League v. Credit Union Comm.*, 302 N.C. 458, 276 S.E.2d 404 (1981). When interpreting statutes, the words in the statute are to be given their ordinary meaning unless the General Assembly has specifically defined them or they have an acquired technical meaning. *Food Town Stores v. City of Salisbury*, 300 N.C. 21, 265 S.E.2d 123 (1980).

Applying those rules to your inquiry, one can plainly discern the legislative intent with regard to Group A and Group C. Section 10 specifically states that Group A, i.e., persons under 18 years of age who held a valid driving privilege, whether a limited learner's permit, a learner's permit or a license, issued before December 1, 1997, are not required to secure driver eligibility certificates under Section 1 of the Act and are not subject to revocation of their present or future driving privileges under Section 2 of the Act, G.S. § 20-13.2. It is equally clear that under Section 10 of the Act Group C, i.e., persons under 18 years of age who had no driving privileges before August 1, 1998, must present a valid driver eligibility certificate before they can receive any driving privilege and that privilege and any subsequent privilege is subject to revocation under Section 2 of the Act, G.S. § 20-13.2(c1), until they reach the age of 18.

The legislative intent regarding the applicability of the Act to Group B is less clear. Unlike drivers who received driving privileges before December 1, 1997, they are not exempt under Section 10 of the Act. However, the driver eligibility requirement established in Section 1 of the Act could not apply to Group B drivers because they received their driving privileges prior to the August 1, 1998, effective date of the Act. Therefore, the question is: Did the General Assembly intend to require DMV to revoke the licenses of drivers who were not required to present a driver eligibility certificate in order to receive their driving privileges?

G.S. § 20-13.2(c1) states in pertinent part that, "[t]he Division must revoke the permit or license of a person under the age of 18 if the proper school authority notifies the Division that the person no longer meets the requirements for a driving eligibility certificate under G.S. 20-11(n)." (Emphasis added). The requirement to revoke the licenses of persons who "no longer" meet the requirements for a driving eligibility certificate implies that the person's receipt of those privileges was initially conditioned on meeting those requirements. Therefore, it is our opinion that the legislature did not intend LEAs to notify DMV to revoke the driving privileges of Group B drivers who have not had a change in driving privilege status after July 31, 1998. Consequently, LEAs should not enter data regarding such drivers into the DMV computer system.

This does not mean, however, that Group B drivers are forever exempt from G.S. § 20-13.2(c1). If a person in Group B has a change in driving status after July 31, 1998, he must present a driver eligibility certificate to DMV in order to receive the new driving privilege. When a Group B driver receives a driving privilege that is dependent on a driver eligibility certificate, he moves from Group B to Group C. Thereafter, as long as he is under 18 years of age, his privilege may be revoked under G.S. § 20-13.2(c1) if he "no longer meets the requirements for a driving eligibility certificate."

Signed by:

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