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ATTORNEY GENERAL OPINION NO. 87-4

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Per Request for Attorney General's Opinion

QUESTION PRESENTED:

Your letter of January 19, 1987, requests our opinion as to "whether or not a boarding school is subject to Idaho's Child-Care Licensing Act" as found in Idaho Code § 39-1208, et seq.

CONCLUSION:

Our opinion is that a boarding school which provides 24-hour group care for children under the age of 18 years is subject to the provisions of the Child-Care Licensing Act.

ANALYSIS:

Your letter indicates that the owner of the facility in question does not think the Child-Care Licensing Act of 1963 (hereinafter "the Act") applies because, in his viewpoint, the facility is a "school providing an education and is not a group home providing full-time substitute parental care." Attached to your letter are copies of materials from the "school" known as the Eagle Mountain Outpost. These materials indicate that this is a facility which receives children through contractual

arrangements with their parents. By the terms of these agreements the children live at the facility and are "supervised in group care by the staff of the Eagle Mountain Outpost." According to the attachments to your letter and an advertising brochure we have received, the facility serves "the adolescent with emotional, behavioral, substance abuse or learning disorders." It holds itself out as a "holistic environment to live, learn, and grow in," and has several program components consisting of "academic education," an "equally important ... highly structured intensive therapeutic environment" and "therapeutic recreation."

In answering your question, we look first to the clear statement of public policy declared by the Idaho legislature in adopting the Act:

... to insure that children of this state shall receive adequate substitute parental care in the event of absence, temporary or permanent inability of parents to provide care and protection for their children. This policy is predicated upon the fact that a child is not capable of protecting himself, and when his parents for any reason have relinquished his care to others, there arises the possibility of certain risks to the child which require offsetting statutory protection of licensing.

Idaho Code § 39-1208. The legislature took the additional step of enacting Idaho Code § 39-1223 to require that the Act be liberally construed to achieve that policy.

We next turn to the definition section of the Act, Idaho Code § 39-1209, et seq., and set forth the following relevant definitions:

- (3) "Child" means a person less than 18 years of age.
- (4) "Foster home" means a home which accepts, for any period of time, with or without compensation, an unrelated

child as a member of the household for the purpose of providing substitute parental care of the child.

. . . .

(7) "Children's agency" or "children's institution" means an organization, corporation, society or association which receives children for control, care, maintenance or placement, . . . or provides group care for children who are in its custody and control through legal action or informal arrangement,

. . . .

. . . .

(9) "Foster care" means child care, in lieu of parental care in a foster home, children's agency or children's institution.

(10) "Group care" means foster care of a number of children . . . in a dormitory or cottage type setting, characterized by activities and discipline of a more regimented and less formal nature than found in a family setting. (Emphasis added.)

The authority for licensing foster homes, children's agencies and children's institutions is granted to the Idaho Department of Health and Welfare. Idaho Code § 39-1213. The standards for licensing these facilities are set forth in Idaho Code §§ 39-1210 and 39-1211. There is no exception in the Act for an educational institution, boarding school, or any other type of school operation which also provides 24-hour group care. The only exception to the scope of the licensing authority contained in this act is provided by Idaho Code § 39-1213(b) wherein a specific exception is granted to a foster home which has been approved by a licensed children's agency or children's institution.

In applying the definitions of the Act to the facility described in your letter and attachments, we are guided by some basic rules of statutory construction. First, in construing a statute the goal is to determine the legislative intent, which intent may be implied by the language used, or inferred on grounds of policy or reasonableness. Summers v. Dooley, 94 Idaho 87, 481 P.2d 318 (1971). When applying a statute to a factual setting, the initial determination is whether the meaning of the statute is clear or ambiguous. If the meaning of the statute is clear, then one should read the statute literally, neither adding nor taking away anything. St. Benedict Hospital v. County of Twin Falls, 107 Idaho 143, 148, 686 P.2d 88 (App. 1984); see also, Messenger v. Burns, 86 Idaho 26, 382 P.2d 913 (1963).

Examining the Act with the above-cited principles in mind, we conclude that the licensing requirements of the Act apply to a boarding school that provides 24-hour group care for children under the age of 18 years. The children who live at and attend the facility are all "less than 18 years of age." Idaho Code § 39-1209(3). They are "unrelated" to the owner or operator. Idaho Code § 39-1209(4). The facility cares for the children on a 24-hour basis. The children's parents obviously are not in a position to provide care for them while they are at the facility. The facility operators and staff provide care "in lieu of parental care." Idaho Code § 39-1209(9). By doing so, the facility is providing "foster care." Id.

According to the sample "agreement" attached to your letter, the facility holds itself out as a provider of "group care." Under the relevant language of the Act, "group care" is defined as "foster care of a number of children . . . in a dormitory or cottage-type setting, characterized by activities and discipline of a more regimented and less formal nature than found in a family setting." Idaho Code § 39-1209(10). Finally, the facility also meets the definition of "children's agency," or "children's institution," because it is "an organization . . . which receives children for control, care, maintenance or placement, . . . or provides group care for children who are in its custody and control through . . . informal arrangement," (emphasis added) Idaho Code § 39-1209(7).

Our opinion that this facility is subject to the Child-Care Licensing Act is confirmed by reference to the expressed legislative policy to require the "offsetting statutory protection of licensing" when a child's parents for any reason have relinquished his care to others. That legislative policy should be attained through liberal construction of the Act. Idaho Code §§ 39-1208 and 39-1223. We recognize that the stated goals of the facility's operators are laudable, and that there may well be a need for this kind of program in our society today. However, the clear and unambiguous language of the Act and the legislative policy behind it do not discourage such programs. The Act simply specifies minimum standards to ensure that children receive adequate care when their "parents for any reason have relinquished [their] care to others."

Your letter implies that the operators of this facility maintain that they are instead governed exclusively by the education acts found in Idaho Code Title 33. However, those statutes do not provide any definition of a "boarding school," nor any specific exemption or exclusion from the scope of the Child-Care Licensing Act. Idaho Code §§ 33-118 and 119 prescribe the minimum course of study and accreditation. These are educational requirements and do not address group care, health, safety or living requirements. A review of the definition section in Idaho Code § 33-1001, together with the certification requirements for teachers in Idaho Code § 33-1201 and the savings provision of Idaho Code § 33-1257, indicates a legislative intent that the education acts not conflict with the provisions of the Child-Care Licensing Act. In fact, Idaho Code § 33-122 directs the Board of Education to cooperate with the Board of Health and Welfare on public health matters.

While a comparison of the provisions of the Child-Care Licensing Act and the provisions of the education acts contained in title 33 reveals no conflict, even if we were to assume such a conflict the provisions would have to be reconciled and construed so as to give effect to both. State v. Roderick, 85 Idaho 80, 84, 375 P.2d 1005 (1962). There is no inherent conflict in requiring the certification of a particular educational program for a facility of this nature and also requiring that the group care and living environment aspects be licensed by the childcare licensing agency. See, 51 AmJur 2d, Licenses and Permits, §§ 21, 44, 126; Independent School

District v. Pfost, 51 Idaho 240, 4 P.2d 893, 84 A.L.R. 820 (1931); Official Attorney General Opinion No. 76-9, p.65.

In response to the other concerns addressed in your letter, counties are responsible for the cost and enforcement of state penal statutes, and it is the duty of a prosecuting attorney to handle an appropriate child-care licensing case. Idaho Code §§ 31-2227, 39-1220, and 39-1222; Official Attorney General Opinion No. 84-4. The Attorney General does provide assistance to prosecutors in fulfilling their obligations. I.C. §§ 67-1401(7) and 31-2603.

SUMMARY:

Idaho Code § 39-1208, et seq., requires the licensing of a "boarding school" which provides group care for children less than 18 years of age on a 24-hour basis, even though it may also provide an educational program. There is no exception to the provisions of the Child-Care Licensing Act contained in title 33 of the Idaho Code relating to education. It is the duty and responsibility of the counties to enforce state penal statutes and it is the duty of the county prosecuting attorney to prosecute a violation of the Child-Care Licensing Act.

AUTHORITIES CONSIDERED:

Idaho Statutes

Idaho Code § 31-2227
Idaho Code § 33-118
Idaho Code § 33-119
Idaho Code § 33-122
Idaho Code § 33-1001
Idaho Code § 33-1201
Idaho Code § 39-1208
Idaho Code § 39-1209

Idaho Code § 39-1210

Idaho Code § 39-1211

Idaho Code § 39-1213

Idaho Code § 39-1220

Idaho Code § 39-1222

Idaho Code § 39-1223

Idaho Code § 39-1257

Idaho Cases

Summers v. Dooley, 94 Idaho 87, 481 P.2d 318 (1971)

St. Benedict Hospital v. County of Twin Falls, 107 Idaho 143, 686 P.2d 38 (App. 1984)

Messenger v. Burns, 86 Idaho 26, 382 P.2d 913 (1963)

State v. Roderick, 85 Idaho 80, 375 P.2d 1005 (1962)

Independent School District v. Pfost, 51 Idaho 240, 4 P.2d 893, 84 A.L.R. 820 (1931)

Other Authorities

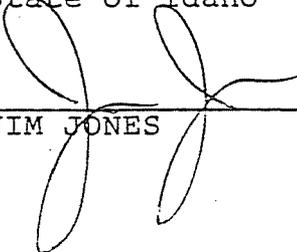
Official Attorney General Opinion Nos. 76-9, 78-34, 84-4

AmJur 2d, Licenses and Permits, §§ 21, 44, 126.

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DATED this 8th day of July, 1987.

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