

AN EDUCATIONAL UPDATE FROM
THE SOUTHEAST LAW INSTITUTE™, INC.

To: Interested Persons
Date: July 2020
From: A. Eric Johnston
Re: Church School and Church Daycare Openings

We have had several inquiries about implications for the reopening of church schools and church daycares. By orders of the Alabama Department of Public Health most places that were not deemed essential had been closed. Some have re-opened and plans are being made now to reopen other facilities, though there is still concern for the existing coronavirus pandemic and for a second wave later in the year. The purpose of this memo is to briefly address a concern we have heard from churches. It is only a generalized suggestion of advice and as things develop we urge you to seek qualified counsel on your own situation, depending on the orders and recommendations of authorities. The specific question most often asked is whether church schools and daycares could be liable for students, children, teachers or other workers getting infected with the coronavirus at the school or daycare. The short answer is there is certainly that possibility. We will tell you what we know at this time.

So there is not any misunderstanding, church operated schools and daycares do not have First Amendment Free Exercise of Religion or Alabama Religious Freedom Amendment protections from civil tort liability. Churches and all related ministries have basically the same such liabilities that any business or person has.

There have been ongoing discussions by political leaders about passing laws to remove liability for coronavirus-related illness. A bill was suggested late in the regular term of the Alabama Legislature. However, no general laws, other than the state budgets, were considered due to the truncated session. That law did not pass. In Congress, there is still discussion about such a law, but the Republicans and Democrats are having a very difficult time agreeing on the next legislation to deal with coronavirus issues. We hope Congress will pass a law protecting everyone from liability lawsuits. There is no such protection at this time. Plaintiff lawyers are already filing lawsuits against nursing homes and others. The number of these lawsuits will increase.

At some future time and place in the legal spectrum, a “standard of care” will develop. It will likely vary from state to state. That standard of care will be what determines whether someone is liable for the transmission of the coronavirus. The best defense to these developing cases is to follow best practices. This is done by following the various guidelines that have been and will be issued by the Centers for Disease Control, the National Institutes of Health, the Alabama Department of Public Health, the Alabama State Department of Education and other orders from federal and state authorities. What public schools¹ do will provide valuable information. It will be best if there is uniformity in the response. As you have observed, the best practices are developing virtually day by day. Healthcare and public policy analysts are having a difficult time identifying the parameters of the coronavirus. Therefore, we continue with an evolution of orders.

Schools and daycares represent a unique challenge due to the number of students in confined places. Social distancing is universally agreed as a good practice. This has permitted churches to re-open for services. Testing is also a good practice, but test kits are not widely available yet. The benefits of sheltering in place, lockdowns, *etcetera*, are up for debate. Most citizens, businesses, churches and schools have followed the dictates of authorities. It seems that abuse most likely occurs in venues like beaches, bars and other public places.

There are no answers presently about when schools and daycares will fully open and what suggestions will be for regulating the presence of students and children now and later. In the coming weeks a great deal of thought will go into this by the various authorities. We recommend that your governing body collect the information as it is made available and synthesize it into your own specific plan. Then, document and adhere to the plan to first protect students, children, teachers and other workers. This will reduce liability risks. There is much uncertainty about the coronavirus and COVID 19. It is something modern medicine and public policy has not experienced. Following the recommendation of authorities and developing a plan will do much to accomplish the necessary goals. You will implement the best standard of care that you can under the circumstances. This will help deferring a lawsuit.

You might consider requiring families to sign a carefully written release of liability. Since there are many uncertainties, it is not unreasonable to realize there is some risk.

Finally, check your insurance coverage. See if it provides coverage for claims related to the coronavirus. If you do not have this coverage, you may also wish to check with your insurance agent to see if coverage can be purchased. Keep in mind that insurance coverage not only protects you from damages, but also pays the legal expenses of attorneys’ fees and court costs.

As things develop, please let us know if you have questions. We will be glad to assist you to the extent possible. To reiterate, we encourage you to follow the plans and seek competent legal advice in dealing with these issues in your church.

¹ Public schools are immune from liability by law.