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Honorable Rusty Glover
Member, Alabama State Senate
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School Attendance -- Schools -- Age Requirements -- Church Schools -- Home Schools -- Exemptions -- Mobile County

With the enactment of Act 2009-564, the prior attendance exemption provided to church-schooled students is now conditioned on that student's attendance at the church school before attaining his or her 16th birthday.

Section 16-28-3 of the Code of Alabama does not recognize an attendance exemption for any other category of instruction. The attendance exemption is thus limited to qualified church-schooled students, including those church-schooled students who pursue a home-study curriculum by enrolling and "attending" a church school.

A student who is instructed by a competent private tutor must attend school until he or she is 17 years of age. The exemption from the compulsory attendance age of 17 applies only to eligible church-schooled students discussed herein.

Dear Senator Glover:

This opinion of the Attorney General is issued in response to your request.

QUESTION 1

> Are the attendance exemptions provided to "home-schooled" and church-schooled students prior to the enactment of Act 2009-564 still intact?

FACTS AND ANALYSIS

Section 16-28-3 of the Code of Alabama, as amended by Act 2009-564, establishes the mandatory attendance age for ***all students*** as between seven and 17 years of age. That section, however, also creates an exception to the mandatory attendance age for certain delineated students of church schools as defined in state law. That section provides as follows:

> Every child between the ages of seven and 17 years shall be required to attend a public school, private school, church school, or be instructed by a competent private tutor for the entire length of the school term in every scholastic ***year except that, prior to attaining his or her 16th birthday every child attending a church school as defined in Section 16-28-1 is exempt from the requirements of this section***, provided such child complies with enrollment and reporting procedure specified in Section 16-28-7. . . .

ALA. CODE § 16-28-3 (Supp. 2009) (emphasis added).

Accordingly, a church-schooled student is exempt from the mandatory school attendance age of 17–if he or she were previously attending a church school before attaining his or her 16th birthday. If that prerequisite is met, there is no legal impediment under this section for such a student to withdraw from school prior to attaining 17 years of age.

Before the enactment of Act 2009-564, section 16-28-3 of the Code stated, in part, that "every child attending a church school . . . is exempt from the requirements of this section. . . ." ALA. CODE § 16-28-3 (2001). The enactment of Act 2009-564 placed the proviso of "***prior to attaining his or her 16th birthday*** every child attending a church school . . . is exempt from the requirements of this section. . . ." ALA. CODE § 16-28-3 (Supp. 2009).

That additional language conditioned the early withdrawal (at 16 years of age) of a church-schooled student on his or her prior attendance in a church school before that student's 16th birthday. Specifically, a student must be attending a church school prior to the student's 16th birthday before that church-schooled student can properly withdraw from school before reaching the mandatory attendance age. In other words, one cannot transfer to a church school and then immediately qualify to withdraw from school before one reaches 17 years of age. The student must have attended the church school before his or her 16th birthday before he or she can then qualify to withdraw under the exception. As the plain language of the statute reflects, the exemption from the compulsory attendance age of 17--before and after the enactment of Act 2009-564--applies only to church-schooled students.

Because Alabama law does not recognize the term "home school," per se, certain "home-schooled" students are, in fact, church-schooled students who are enrolled in and "attend" a church school, but who follow a home-study curriculum. A student who enrolls and "attends" a church school through a home-study curriculum is also considered a "child attending a church school" pursuant to section 16-28-3 and could qualify for the mandatory-age exemption as discussed herein.

The only recognized "homeschooling" under the auspices of Alabama law occurs when a student studies at home through a competent private tutor or through enrolling and "attending" a church school with a home-study curriculum. Instruction by a competent private tutor clearly falls outside the church-school exception, and therefore a tutored "home-schooled" student must comply with the mandatory attendance age of 17.

CONCLUSION

With the enactment of Act 2009-564, the prior attendance exemption provided to church-schooled students is now conditioned on that student's attendance at the church school before attaining his or her 16th birthday.

Section 16-28-3 does not recognize an attendance exemption for any other category of instruction. The attendance exemption is thus limited to qualified church-schooled students, including those church-schooled students who pursue a home-study curriculum by enrolling and "attending" a church school.

Thus, a student who is instructed by a competent private tutor must attend school until he or she is 17 years of age. The exemption from the compulsory

attendance age of 17 applies only to eligible church-schooled students discussed herein.

QUESTION 2

What, if any, is the effect of the enactment of Act 2009-564 on "home-schooled" and church-schooled students?

FACTS, ANALYSIS, AND CONCLUSION

In general, Act 2009-564 raised the compulsory attendance age to 17 for all students, that is, students who "attend a public school, private school, church school, or [are] instructed by a competent private tutor." 2009 Act 2009-564. Although Alabama law does not recognize "home schooling," a student instructed by a competent private tutor must attend school until he or she is 17 years of age. A child attending a church school, including a student who enrolls and attends a church school through a home-study curriculum, is eligible for the mandatory-age exemption--if he or she was previously attending a church school before attaining his or her 16th birthday.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact me.

Sincerely,

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