

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

To: Interested Persons
Date: June 2017
From: A. Eric Johnston
Re: HB277 – Church Regulation of Daycares

Thirty-five years ago there were state efforts to license and regulate both church schools and church daycares. As a result, laws were passed protecting those church ministries from state intrusion. Three years ago, the Alabama State Department of Education attempted to reestablish regulation over church schools, but we opposed the effort and it failed. This year, certain nonprofit organizations connected to liberal childcare policy groups tried to influence the Alabama Department of Human Relations (“DHR”) to cooperate in removing the regulatory exemption for church daycares. This was legislative bill HB277. It failed.

Since 1981, times have changed. Some “for profit” daycares masquerade as churches to get the exemption. A few church daycares are substandard, as are some that are licensed. There are no statistics on incidents at exempt daycares. There is no evidence of problems justifying licensure. The examples given in legislative committees and on the floor would not have been corrected by licensure, but were generally due to human error or violation of health standards. Minimum but necessary regulation already exists.

The primary opponent of HB277 was the Alabama Christian Education Association (“ACEA”) under the leadership of its Executive Director, Robin Mears. Mr. Mears and I participated in the passage of the original laws. ACEA is the only association, as such, which would be able to coordinate opposition. However, a significant number of churches, pro-family organizations and individuals joined in the effort.

As written, HB277 was unconstitutional because of an undue burden on religious practice. *See*, April 2017 Educational Update. We offered a compromise with less intrusive amendments that would have corrected situations that have resulted in abuse of the law. However, for weeks into the session HB277 proponents refused to compromise and misled us, as well as legislators. Their objective was licensure, not cooperation. With strong intervention by churches, citizens, ALCAP and other cooperating pro-family groups, the tide turned and a substantially acceptable bill passed the House. Several tweaks were made in the Senate Judiciary Committee making the bill generally acceptable, although the proponents were still disingenuous in their efforts to place church daycare ministries under significant state control. We opposed those efforts and the committee passed an acceptable amended bill. When the bill moved for a vote of the Senate, a number of Senators expressed their disagreement with the bill for various reasons. We informed them the bill was acceptable to us in its content, but could not address their concerns.

There was a last minute discovery of significant financial profit expectations of proponents of the bill. We questioned their motives. Even as compromised, the bill could have been a stepping stone to later efforts to license. We could not in the lateness of the hour resolve our doubts and any unknown adverse results. Nevertheless, we advised legislators that we were still in agreement with language in the amended bill, but we were not in a position to intervene in the process on behalf of others who opposed the bill.

Unfortunately, one of our well meaning allies undermined legislators’ confidence in our cooperation by openly opposing the amended bill late in the session. This caused confusion and mistrust by legislators. In the waning hours of the session, there was confusion about whether the bill was good or bad and the bill died in the Senate on the last day. We have established a great deal of confidence with our legislators. Harm has been done to that relationship, as a result of all conservative groups not coalescing and supporting the overall effort. Those fences will need to be mended. We did and we now assure legislators that they may have every confidence in their work with us. Many dynamics coalesced to create confusion. We apologize to legislators for this trauma in the session.

But for the bill itself, we are neither happy nor sad that the bill failed. If HB277 had passed as proposed by the proponents, the church would have come under significant state regulation. If it had passed as amended, some uncertainty would have followed. If there were no further efforts by proponents to further regulate church daycares, then the amended bill as we agreed to would not have put churches under significant regulation. There would have been minimal oversight by DHR to assure, *inter alia*, that church daycares were in fact being operated by churches, were properly insured, and that the fire and safety inspections were done on an annual basis.

If there had been a good faith effort in the beginning by proponents, we could have passed a law that protects children while maintaining protection of church ministry. We committed to the Commissioner of DHR that we would return next year to do that. If the proponents do not cooperate, we will still continue the effort. We owe that to the legislators who worked in good faith to help us on this bill and to the churches which place their confidence in our efforts. Childcare advocates must realize and cooperate to respect religious freedom and the ability of the church to properly regulate itself. It will be difficult for them, because they put their faith in government, rather than God inspired institutions. The proponents do not recognize the strength of church leadership and members to provide and regulate a proper environment for all of its ministries. We must realize that religious freedom is not to be taken for granted, but something that always must be defended.