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HENRY McMASTER  
ATTORNEY GENERAL

August 1, 2006

The Honorable Danny Verdin  
Senator, District No. 9  
P. O. Box 272  
Laurens, South Carolina 29360

Dear Senator Verdin:

In a letter to this office you referenced the provisions of S.C. Code Ann. § 59-37-10 which states:

[u]pon application of the directors or managing board of any eleemosynary institution in this State, operated without profit as a home for orphans or needy children who are admitted thereto, the State Board of Education shall establish a grammar or high school or both for the inmates of such institution within school age.

Pursuant to S.C. Code Ann. § 59-37-20, “[s]hould any such school be established, the State Board of Education shall place it under the direction and control of the board of school trustees of the school district in which the institution is located...” However, S.C. Code Ann. § 59-37-30 provides in part that “[t]he local school district shall not be required to contribute any school facilities to any such institution, and the State Board of Education may discontinue any such school at any time that in its judgment it is advisable to do so.” Referencing Section 59-37-10 you have questioned whether the District 56 Board of Education is required to provide an education to the children of the Thornwell Home. You also questioned what, if any, bearing would such provision have on Thornwell’s proposed status as an independent charter school.<sup>1</sup>

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<sup>1</sup>For your information, I am enclosing a copy of a prior opinion of this office dated June 1, 2006 which referenced the situation of a nonprofit corporation, the Thornwell Charter School, applying to become a charter school. It was stated that such Charter School would utilize the resources, including the facilities, that presently belong to the Thornwell Home for Children. The question was raised as to whether such would be in conflict with S.C. Code Ann. § 59-40-210 which states that “[a] school established as a private school...which desires to convert to a charter school  
(continued...)

*Rembert C. Dennis*

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Based upon my review, Sections 59-37-10 et seq. have not been construed by any decisions of the State Supreme Court or this office in prior opinions. However, when interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

It is my understanding that Thornwell Home would qualify as an eleemosynary institution. Section 59-37-10 plainly states that upon application by Thornwell, the State Board of Education is required to establish a grammar or high school or both for the children of such institution within school age. Consistent with Section 59-37-20, such school would be "under the direction and control of the board of school trustees of the school district in which the institution is located...." Therefore, the school district in which Thornwell Home is located would be required to provide an education to the children at the Home. However, Section 59-37-30 also states that "[t]he local school district shall not be required to contribute any school facilities to any such institution, and the State Board of Education may discontinue any such school at any time that in its judgment it is advisable to do so."

As to your question of what, if any, bearing would Section 59-37-10 have on Thornwell becoming an charter public school, pursuant to the provisions of S.C. Code Ann. §§59-40-10 et seq. which authorize charter schools in South Carolina, becoming a charter school is a discretionary process. For instance, Section 59-40-60(D) refers to "...an applicant who wishes to form a charter school." The term "applicant" is defined by Section 59-40-40(3) as "...the person who or nonprofit corporate entity that desires to form a charter school." Of course, as set forth in Section 59-40-

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<sup>1</sup>(...continued)

shall dissolve and must not be allowed to open as a charter school for a period of twelve months." The opinion noted that based upon the facts relayed to this office, there did not appear to be any "desires" by the present school associated with the Thornwell Home "to convert" that school to the Thornwell Charter School. Instead, it appeared that there would be the establishment of a separate school, the Thornwell Charter school, a separate, nonprofit corporation which simply planned to utilize the facilities and resources of the Thornwell Home for Children School. As a result, there would be no conflict with Section 59-40-210.

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40(2)(a), a charter school "...is considered a public school and part of the South Carolina Public Charter School District or local school district in which it is located for the purposes of state law and the state constitution." Therefore, in my opinion, Section 59-37-10 would have no bearing on Thornwell's status as an independent charter public school. While a school is to be established for the children at that institution by such provision, I am unaware of any separate provision which would prevent a charter public school from being established if such is desired. Again, becoming a charter school is a discretionary process on behalf of the entity or individuals who wish to establish such.

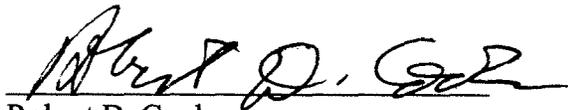
With kind regards, I am,

Very truly yours,



Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Assistant Deputy Attorney General