



HENRY McMASTER
ATTORNEY GENERAL

June 10, 2009

The Honorable H. Boyd Brown
Member, House of Representatives
P. O. Box 26
Winnsboro, South Carolina 29180

Dear Representative Brown:

In a letter to this office you requested an opinion regarding S. 796, a local legislation bill filed by Senator Coleman, directing that the Fairfield County Treasurer transfer funds from Fairfield County to Chester County in order to defray the cost of educating Fairfield County students being educated in Chester County Schools.

Prior to receiving your request, I received a similar request from Senator Coleman. I spoke with him by telephone Monday and faxed him a copy of a prior opinion of this office dated January 30, 2006, a copy of which is enclosed, which references the provisions of S.C. Code Ann. § 59-63-480 which state that

[i]f school children in one county reside closer to schools in an adjacent county, they may attend such schools upon the school authorities of the county of their residence arranging with the school officials of the adjacent county for such admission and upon payment of appropriate charges as herein authorized. The board of trustees in the school district in which the pupils reside shall make written application through its county board of education to the board of trustees of the district in which the school is located for the admission of such children, giving full information as to ages, residence and school attainment, and the board of trustees in the school district, agreeing to accept such pupils, shall give a written statement of agreement. Upon receipt of such application the board of trustees of the school and its county board of education shall determine the monthly per pupil cost of all overhead expenses of the school, which will include all expenses of the school not paid by the State. Upon proper arrangement being made for the payment monthly of such overhead per pupil cost for each such child the same shall be admitted to the schools of the adjacent county.

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I am also forwarding a copy of a decision of the State Court of Appeals in Smith v. Wallace, 295 S.C. 448, 369 S.E.2d 657 (Ct.App. 1988) which construed Section 59-63-480 to indicate that when students living in one county reside closer to a school in an adjoining county than to a school in the county of their residence, the board of trustees of the school district in which the students reside has no discretion with regard to making an application to the adjoining school district for these students to be admitted to that district. Of course, as specified by Section 59-63-480, the district to which application is made must agree to accept these students. The statute also states that the board of trustees of the school to which the application is made and its county board of education shall determine the monthly per pupil cost of all overhead expenses of the school, which will include all expenses of the school not paid by the State.

Therefore, consistent with such statute, it appears that the intended purpose of S. 796 is already covered by state law. I have discussed such with Senator Coleman and advised him of my conclusions. Therefore, it does not appear that the enactment of S. 796 would be necessary assuming, of course, that the Chester County schools agree to take the Fairfield County students and agree to the payments provided by S. 796.

If there are any questions, please advise.

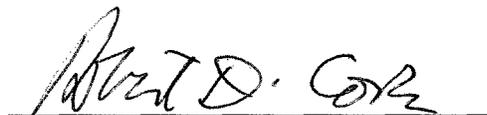
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

cc: The Honorable Creighton B. Coleman
Senator, District No. 17