

February 25, 2008

The Honorable Raymond E. Cleary III
Senator, District No. 34
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Cleary:

In a letter to this office you indicated that you had received requests from constituents regarding the legality of the form of school district governance by the Horry County School District referred to as "Policy Governance". You indicated that your constituents contend that the public is being defrauded, the Horry County Board of Education has relinquished its constituent responsibilities, free speech has been inhibited and the public has been greatly impacted by their lack of input. You further questioned whether such policy might thwart school board members with regard to their ability to govern.

At my request, you forwarded a copy of the referenced document which is referred to as "Horry County Schools - Coherent Governance Policies" which covers a wide variety of issues relating to the school board and the superintendent and how they relate to the public. Generally, a precise response to your constituent's concerns is not possible in an opinion of this office as responses to such expressed concerns are dependent on the relevant facts behind such concerns. A complete review of all the facts involved would be necessary in order to respond to such concerns. However, such is beyond the province of this office in the issuance of an opinion in that this office in an opinion cannot determine facts or resolve factual issues. See: Op. Atty. Gen. dated October 4, 2004.

Nevertheless, I have reviewed the above-referenced document with regard to the contentions expressed above. In particular, one section is entitled "Policy Type: Governance Culture" and refers to "Governing Commitments". Reference is made to matters of procedure "[t]o ensure that the board's business meetings are conducted with maximum effectiveness and efficiency" such as board members speaking only when recognized, not interrupting each other, not engaging in side conversations, not repeating what has already been said, etc. Another section entitled "Policy Type: Governing Culture" states that the board will "[i]nitiate and maintain constructive two-way dialogue with students, staff, parents and the citizens as a means to engage all stakeholders in the work of the board and the district." Another section similarly entitled "Policy Type: Governing Culture" assigns specific duties to the Chair such as:

[m]onitor board actions to assure that they are consistent with the board's own rules and policies and with other obligations imposed by agencies whose authority supersedes the board's own authority;

a. Conduct and monitor all board meeting deliberations to assure that board discussion and attention are focused on board issues, as defined in board policy...and conducted with consistent protocol. The Chair will:

Refrain from repeating, summarizing or disagreeing with members' comments as discussion is facilitated;
Speak to issues in turn as do other members;
Permit discussion of action items during business meetings only after a motion and second;
Recognize members in order for them to speak;
Not offer motions or seconds while serving as presiding officer.

b. Assure that board meeting discussions are productive, efficient and orderly;

c. Chair board meetings using the authority normally vested in the chair as described in Robert's Rules of Order;

d. Lead timely board meeting debriefings and periodic self-assessments to ensure continuous process improvement.

Another section also entitled "Policy Type: Governance Culture" prescribes board members' code of conduct. Such section establishes standards of conduct for board members commenting that

[b]oard members will serve the interests of the citizens of the entire school district...(and)...will not attempt to exercise individual authority over the organization.

Another section entitled "Policy Type: Operational Expectations" provides for measures to be followed in communicating with the public stating that "[t]he superintendent shall assure that the public is adequately informed about the condition and direction of the district." It further states that "[t]he superintendent shall:

1. Assure the timely flow of information, appropriate input, and strategic two-way dialog between the district and the citizens that builds understanding and support for district efforts.

2. Prepare and publish, on behalf of the board, an annual progress report to the public that includes the following items:

a. Data indicating student progress toward accomplishing the board's **Results** policies;

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- b. Information about school district strategies, programs and operations intended to accomplish the board's **Results** policies.
- c. Revenues, expenditures and costs of major programs and a review of the district's financial condition.

S.C. Code Ann. § 59-19-110 grants broad discretionary authority to school boards stating that “[t]he boards of trustees of the several school districts may prescribe such rules and regulations not inconsistent with the statute law of this State as they may deem necessary or advisable to the proper disposition of matters brought before them.” Therefore, the conduct of a board of trustees is within the discretion of the board as long as such is not inconsistent with State law. For instance, the board of trustees as a public agency would be subject to this State's freedom of information laws. See: S.C. Code Ann. §§ 30-4-10 et seq. However, certain restrictions are allowable. For instance, generally, there is no *per se* right to speak at a public meeting where there are rules in place establishing procedures and policies to be followed in speaking. In Gigler v. Klamath Falls, 537 P.2d 121 (Ore. 1975), the court upheld against a challenge of a violation of the First Amendment right of free speech a rule barring an individual from being heard at a meeting without prior notice being provided. In Duddles v. City Council of West Linn, 535 P.2d 583 (Ore. 1975) the court held that a public body was free to adopt its own standards governing standing to appear before it and to provide who would be entitled to remonstrate before it so long as the standards were consistent with due process requirements. The United States Supreme Court in its decision in Board of Education v. Pico, 457 U.S. 853 at 863 (1982) stressed that “[t]he Court has long recognized that local school boards have broad discretion in the management of school affairs.” Therefore, consistent with such, in the opinion of this office, a school board has broad authority in dealing with issues as they relate to the public subject to specific statutes governing public bodies generally.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General