

August 8, 2007

The Honorable Larry K. Grooms  
Senator, District No. 37  
131 Indian Field Drive  
Bonneau, South Carolina 29431

Dear Senator Grooms:

In a letter to this office you referenced provisions of newly enacted Act No. 102 of 2007 which provides in a section to be codified as S.C. Code Ann. § 59-29-230(A)(1) that “[a] school district board of trustees may authorize to be taught in the district’s high schools, an elective course concerning the history and literature of the Old Testament era and an elective course concerning the history and literature of the New Testament era.” A provision to be codified as section (C) in that same statute states that “[t]he State Board of Education shall develop and adopt academic standards and appropriate instructional materials that must be used by high schools offering a course pursuant to this section.”

You also referenced the provisions of S.C. Code Ann. § 59-18-320(D) which provide that “[a]ny new standards and assessments required to be developed and adopted by the State Board of Education, through the Department of Education, must be developed and adopted upon the advice and consent of the Education Oversight Committee.” You have questioned whether the State Board of Education alone is responsible for the promulgation of academic standards in compliance with Section 59-29-230(C) for the courses on the Old Testament and the New Testament authorized by Section 59-29-230 or does Section 59-18-320(D) require the Education Oversight Committee to participate in the process.

In the opinion of this office, the State Board of Education alone is responsible for the promulgation of standards for the courses authorized by Section 59-29-230 inasmuch as the elective courses dealing with the Old and New Testaments are not core courses of instruction. The distinction between standards for “core courses” and other courses of instruction is noted by S.C. Code Ann. § 59-18-300 which provides that

The State Board of Education is directed to adopt grade specific performance-oriented educational standards in the core academic areas of mathematics, English/language arts, social studies (history, government, economics and geography), and science for kindergarten through twelfth grade and for grades nine through twelve adopt specific academic standards for benchmark courses in mathematics, English/language arts, social studies and science....(emphasis added).

Consistent with such, S.C. Code Ann. § 59-18-310(B) provides for the State Board of Education, through the Department of Education, to develop and adopt statewide assessment programs “in the four academic areas” which appear to reflect the “core academic areas” of mathematics, English/language arts, social studies and science. The distinction between core courses and other courses of instruction is also noted by subsection [C] of Section 59-18-310 which further provides that “[w]hile assessment is called for in the specific areas mentioned above, this should not be construed as lessening the importance of foreign languages, visual and performing arts, health, physical education, and career or occupational programs.” I would note that, according to the document entitled “Standard Operating Procedure for the Cyclical Review of the South Carolina PreK-12 Academic Standards and for the Development of New Academic Standards” prepared by the staffs of the State Department of Education and the State Education Oversight Committee, the schematic outline of the process for the review and revision of preK-12 visual/performing arts, foreign languages, physical education, and health/safety education standards does not provide for review by the Education Oversight Committee.

As noted above, Section 59-18-320(D) provides that “[a]ny new standards and assessments required to be developed and adopted by the State Board of Education, through the Department of Education, must be developed and adopted upon the advice and consent of the Education Oversight Committee.” The distinction between core courses and other courses of instruction is also noted by subsection (A) of that same Section 59-18-320 which states that

After the first statewide field test of the assessment program in each of the four academic areas, and after the field tests of the end of course assessments of benchmark courses, the Education Oversight Committee, established in Section 59-6-10, will review the state assessment program and the course assessments for alignment with the state standards, level of difficulty and validity, and for the ability to differentiate levels of achievement, and will make recommendations for needed changes, if any. (emphasis added).

Consistent with such distinction between core courses and other courses of instruction, subsection (B) of such provision states that “[a]fter review and approval by the Education Oversight Committee, the standards-based assessment of mathematics, English/language arts, social studies, and science will be administered to all public school students....” A prior opinion of this office dated January 20, 2006 commented that these provisions “...bestow...important responsibilities upon the...(Education Oversight Committee)...in the area of approval of standards required in the core

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courses to be taught in South Carolina's public schools." Inasmuch as the courses on the Old and New Testaments authorized by Act No. 102, which are described as "elective" courses, are not considered core courses, the advice and consent of the Education Oversight Committee to the standards and assessment does not appear to be required.

If there are any questions, please advise.

Sincerely,

Henry McMaster  
Attorney General

By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General