



HENRY MCMASTER
ATTORNEY GENERAL

September 7, 2010

The Honorable Shane Martin
Senator, District No. 13
P. O. Box 575
Pauline, South Carolina 29374

Dear Senator Martin:

In a letter to this office you referenced the provisions of S.C. Code Ann. § 59-63-30 which state

[c]hildren within the ages prescribed by § 59-63-20 shall be entitled to attend the public schools of any school district, without charge, only if qualified under the following provisions of this section:

- (a) Such child resides with its parent or legal guardian;
- (b) The parent or legal guardian, with whom the child resides, is a resident of such school district; or
- (c) The child owns real estate in the district having an assessed value of three hundred dollars or more; and
- (d) The child has maintained a satisfactory scholastic record in accordance with scholastic standards of achievement prescribed by the trustees pursuant to § 59-19-90; and
- (e) The child has not been guilty of infraction of the rules of conduct promulgated by the trustees of such school district pursuant to § 59-19-90.

Also of relevance is S.C. Code Ann. § 59-63-45 which states

(A) [n]otwithstanding the provisions of this chapter, a nonresident child otherwise meeting the enrollment requirements of this chapter may attend a school in a school district which he is otherwise qualified to attend if the person responsible for educating the child pays an amount equal to the prior year's local revenue per child raised by the millage levied for school district operations and debt service reduced by school taxes on real property owned by the child paid to the school district in which he is enrolled. The district may waive all or a portion of the payment required by this section.

(B) Students attending a school pursuant to this section must be counted in enrollment for purposes of determining state aid to the district.

(C) If the payment to the school district is not made within a reasonable time as determined by the district, the child must be removed from the school after notice is given.

(D) Any nonresident student enrolled in the schools of a district no later than September 9, 1996, shall not be required to meet the conditions of subsection (A) of this section as long as the student is continuously enrolled in the district and as long as the student meets the qualifications provided by law for attending the schools of the district.

Section 59-63-30 is a provision in the same chapter as Section 59-63-45. Therefore, as set forth by such provision, a nonresident child may attend a school in a school district which he is otherwise qualified to attend if the parent "...pays an amount equal to the prior year's local revenue per child raised by the millage levied for school district operations and debt service reduced by school taxes on real property owned by the child paid to the school district in which he is enrolled." Such requirement must be read in addition to the provisions of Section 59-63-30. See: Op. Atty. Gen. dated December 8, 2005.

Referencing such you have raised the following questions:

1. If a child owns real estate in his or her name in the amount of \$300.00 in assessed value within a school district in which the child does not reside but wishes to transfer as required by Section 59-63-30(c) and complies with subsections (d) and (e) of the same section of the law, does the child have to obtain a release from the district of residence to transfer to the district of non-residence?
2. Under the same provisions and circumstances of Question 1, can the district of non-residence into which the child is to be transferred deny the child's enrollment if the land requirement, scholastic achievement, good conduct, and payment of any required tuition are met?
3. In light of Questions 1 and 2, does the child have to pay any additional tuition beyond what would normally be required by the receiving district if the child was transferred without owning the required real estate amount specified and had obtained a written release from the district of residence and had been accepted by the receiving district?

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 Honorable Shane Martin
Page 3
September 7, 2010

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).

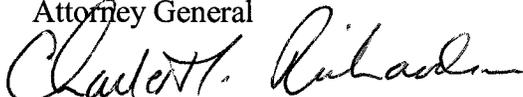
Referencing the above, if a child owns real estate in his or her name in the amount of \$300.00 in assessed value within a school district in which the child does not reside but wishes to transfer as authorized by Section 59-63-30(c) and complies with subsections (d) and (e) of the same section of the law, in the opinion of this office there is no requirement that the child obtain a release from the district of residence to transfer to the district of non-residence. Similarly, under the same provisions and circumstances of Question 1, in the opinion of this office, the district of non-residence into which the child is to be transferred cannot deny the child's enrollment if the land requirement, scholastic achievement, good conduct, and payment of any required tuition are met.

Section 59-63-45(C) states that "[i]f the payment to the school district is not made...(pursuant to subsection (A))...within a reasonable time as determined by the district, the child must be removed from the school after notice is given." However, in the opinion of this office, the child would not have to pay any additional tuition beyond what would normally be required pursuant to Section 59-63-45 by the receiving district if the child was transferred without owning the required real estate amount specified and the child had obtained a written release from the district of residence and had been accepted by the receiving district. It appears that the failure of the district to require that the child own the required real estate would be an oversight that may not be held against the child.

With kind regards, I am,

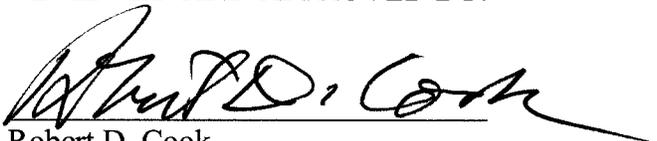
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
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REVIEWED AND APPROVED BY:



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