



HENRY McMASTER  
ATTORNEY GENERAL

September 1, 2009

The Honorable Glenn G. Reese  
Senator, District No. 11  
507 Fagan Drive  
Lake Bowen  
Inman, South Carolina 29349-7000

Dear Senator Reese:

In a letter you forwarded an inquiry from a constituent regarding his children's attendance at a public school outside the district where they reside. According to the constituent, the family's home is in School District One but the children, who own property in their own names in District Two, attend school in District Two.

S.C. Code Ann. §59-63-30 states:

[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.

It is my understanding your constituent's children meet the requirement of Section 59-63-30 that each child owns real estate in the district having a value of three hundred dollars or more.

However, in addition to Section 59-63-30, S.C. Code Ann. § 59-63-45 provides that

(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.

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. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

As set forth by Section 59-63-45, 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." Section 59-63-30 is a provision in the same chapter as Section 59-63-45 so the latter provision would be applicable where a child attends a school in another district by virtue of owning real estate in that district. Therefore, such requirement mandating payment as established must be read in addition to the provisions of Section 59-63-30. See also: Ops. Atty. Gen. dated July 8, 2009 and December 8, 2005.

Reference was made by your constituent to S.C. Code Ann. § 59-63-490 which states that

[w]hen it shall so happen that any person is so situated as to be better accommodated at the school of an adjoining school district, whether special or otherwise, the board of trustees of the school district in which such person resides may, with the consent of the board of trustees of the school district in which such school is located, transfer such person for education to the school district in which such school is located, and the trustees of the school district in which the school is located shall receive such person into the school as though he resided within the district.

As to such provision, your constituent states:

[w]e would interpret this...(provision)...to mean that since we live adjacent to School District #2, and since our children have already been accepted into School District #2 (for five years already), that our children should be received by School District #2 as though they resided within School District #2. The interpretation we ask for with regard to...(Section 59-63-490)...is whether "...receiving the student as though he resided within the district" eliminates the need for fees for out of district tuition. And as stated above, "special or otherwise", it is in the best interest of our children to attend School District #2 because the proximity of where they attend school relative to location of the office where one parent is most of that time.

Section 59-63-490 is also included in Chapter 63 of Title 59 of the State Code. As referenced above, Section 59-63-45, also included in Chapter 63 of Title 59, provides that

(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....

Therefore, in the opinion of this office, even in circumstances where it is determined that a child "is so situated as to be better accommodated at the school of an adjoining school district" and, as a result, that child is admitted to the school of an adjoining district, Section 59-63-45 requires payment of the specified amount. There is no applicable provision for elimination of fees in such circumstances.

Your constituent next referenced the provisions of S.C. Code Ann. § 59-63-530 which state:

[w]henver under the provisions of law any school district or municipal corporation is authorized to levy a special tax for the support of public schools therein, any person not a resident of such school district or municipal corporation shall be entitled to a credit upon fees for the tuition of his children by the amount of such special tax paid by such person.

The question was raised as to whether the school property taxes that the constituent pays for his dental office located in School District #2, which incidentally is not in the children's names, should be credited against the fees that the constituent pays for out-of-district tuition.

Based upon my review, this office has never previously issued an opinion regarding the terms of Section 59-63-530. Also, based upon my research, the State Supreme Court has never construed such provisions. Therefore, the meaning of the term "special tax for the support of public schools" is a case of first impression.

Pursuant to state law, general property taxes for school purposes are authorized. As to Spartanburg County, legislation has been enacted authorizing the levying of taxes generally for school purposes. See: Acts No. 186 of 1963; 857 of 1952 and 374 of 1951. See also: S.C. Code Ann. § 4-9-70 (powers of county councils with regard to public school education). However, Section 59-63-530 makes reference to "a special tax for the support of public schools." The State Supreme Court in its decision in Moye v. Board of Trustees of the University of South Carolina, 255 S.C. 46, 50, 177 S.E.2d 137, 138 (1970) referred to a "tax" as "...an obligation for support of the government as a whole, a contribution to the public treasury out of which are paid all general expenses of government..." That same case, however, made reference to "special taxes" referring to them as taxes "...collected for special purposes rather than for the payment of general expenses of government." Id. at 138-139. Black's Law Dictionary (7<sup>th</sup> ed. 1999) defines the term "special tax" as "...a tax levied for a unique purpose." In an opinion dated February 6, 1981, the California Attorney General referred to "special taxes" as "...any new or additional local tax levied for revenue purposes." Another opinion of the California Attorney General dated November 1, 1979 concluded that for the purposes of that opinion, "...the term 'special tax' means any new or additional tax imposed for revenue purposes by one of the enumerated agencies, and that the in-lieu participation fee of...(a particular)...county is such a tax." In an opinion dated August 15, 1978, the Oregon Attorney General stated as follows:

[a] 'special tax' is ordinarily defined as a tax imposed for a particular limited purpose and not for general governmental purposes, or a tax imposed upon a particular class of transactions, commodities or taxpayers, e.g., a tax to pay for street lighting or mass transit, or a sales tax on gasoline, or a business income tax.

As set forth by Section 59-63-530, a credit is made available upon fees paid for tuition of the taxpayer's child for the amount of any "special tax" paid. However, in the opinion of this office, the amounts generated by the property tax imposed on real estate generally for public school purposes

The Honorable Glenn G. Reese  
Page 5  
September 1, 2009

would not qualify as a "special tax" as defined in the authorities set forth above. Therefore, in the opinion of this office, your constituent would not be entitled to any credit for such property taxes against the fees paid for out-of-district tuition.

With kind regards, I am,

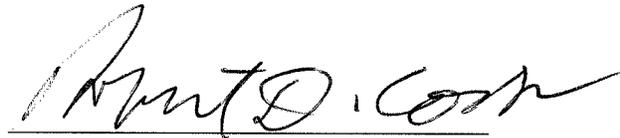
Very truly yours,

Henry McMaster  
Attorney General



By: Charles H. Richardson  
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General