



HENRY McMASTER  
ATTORNEY GENERAL

September 8, 2008

The Honorable Jim Rex  
Superintendent of Education  
1429 Senate Street  
Columbia, South Carolina 29201

Dear Superintendent Rex:

We understand from your letter you desire an opinion of this Office as to “whether school districts that were recipients of funding under the Public Choice Innovation Schools (PCIS) grant program in 2007-08 (funded through proviso 1A.69) . . . may carry forward those funds to the current school year.” You informed us that “[t]he proviso that authorized that program was deleted from the current budget.”

### **Law/Analysis**

According to the information provided with your request, as part of the 2007 appropriations act (the “Act”), the Legislature established a grant program allowing the State Board of Education to fund Public Choice Innovation Schools in South Carolina. 2007 S.C. Acts 751. The Act allows “public and private partnerships” to participate in the program and specifies that “partnerships” include “an educational management organization, a private corporation, an institution of higher education, a consortium of public schools districts and/or a contractual relationship between a private entity and a public school district.” *Id.* The proviso contemplates that the grant is “for a minimum of five years with the first year of funding for planning and equipping purposes and the remaining years of supplemental funding for operation of the innovation school.” *Id.* The first year of funding is set at \$100,000 per school with the possibility of receiving up to \$400,000 in additional grant funds. *Id.* Funding decreases in the subsequent years. *Id.*

Although the 2007 proviso indicates that the grant program will continue for several years, we understand from your letter that the Legislature did not appropriate funds for the program in its 2008 appropriations act. You provided evidence that while the Senate removed the proviso providing funding for the program from the appropriations act, it added a proviso stating that “[u]nexpended Public School Choice Innovation Schools grant funds from the prior fiscal year shall be carried forward and remain in the program.” However, you informed us that this provision was removed during the conference committee meeting.

According to section 2-7-75 of the South Carolina Code (2005): “All state funds appropriated shall be used and all federal and other funds may be used for the operation of state agencies and institutions for the fiscal year for which they are appropriated or made available for use.” Based on this provision, along with section 11-9-80 of the South Carolina Code (1986), establishing South Carolina’s fiscal year, in a 1991 opinion, we concluded that appropriations made in one year cannot be used to reimburse an agency for an expenditure in a previous year. Op. S.C. Atty. Gen., August 27, 1991. See also, Op. S.C. Atty. Gen., January 18, 1983. Thus, South Carolina follows the general rule that “money appropriated for a particular purpose, which remains unexpended and not contractually obligated at the expiration of the appropriation legislation, lapses . . .” 63C Am. Jur. 2d. Public Funds § 46. See also, Hilton Const. Co., Inc. v. Rockdale County Bd. of Ed., 266 S.E.2d 157 (Ga. 1980).

However, we recognize the Legislature’s ability to allow for the carryover of appropriations from one year to the next. See Ops. S.C. Atty. Gen., July 1, 1983 (allowing the Calhoun County School District to spend appropriations made in 1982 for fiscal year 1982-1983 in fiscal year 1983-1984 because of provision in the 1982 law specifically allowing unexpended funds to be carried over to the next fiscal year); January 29, 1980 (determining that a current year expenditure to correct a prior year’s error is not allowed without specific authorization from the Legislature). But, the Legislature must specifically provide for such a carryover. Id.

In our research, we did not uncover a provision in the 2008 appropriations act allowing the carry forward of funds appropriated for the 2007-2008 fiscal year under the program. Furthermore, the legislative history you provided indicates the Legislature did not intend to allow funds appropriated under the program in fiscal year 2007-2008 to be carried forward. As you conveyed in your letter, when the Senate deleted the proviso for Public Choice Innovation Schools from the budget, it added the following provision: “Unexpended Public School Choice Innovation Schools grant funds from the prior fiscal year shall be carried forward and remain in the program.” However, you state “[d]uring conference committee that statement was removed and the House version was adopted, simply removing the program with no mention of carry-forward ability.” Thus, the final version of the appropriations act does not make reference to the ability to carry program funds forward. Accordingly, the fact that the Legislature did not include the carry forward provision indicates it did not intend for such a carry forward to apply.

Finding no specific provision allowing for the carry forward of funds under the program, you ask whether or not the general carry-forward provision found in proviso 1A.44 of the 2008-2009 appropriations act allows school districts receiving funds from the program to carry forward unexpended funds from the 2007 appropriation over to fiscal year 2008-2009. Proviso 1A.44 states, in pertinent part: “School districts and special schools may carry forward unexpended funds from the prior fiscal year into the current fiscal year to be used for the same purpose.” Initially, we see no reason why this provision would not apply to school districts who received funds under the program. However, applying this provision to funds received pursuant to the program raises questions as to whether or not the Legislature intended for this provision to allow school districts receiving funds in fiscal year 2007-2008 to carry those funds forward to fiscal year 2008-2009.

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute.

Sonoco Prod. Co. v. South Carolina Dep't of Revenue, 662 S.E.2d 599, 602 (2008) (citations and quotations omitted).

By not funding the program at all in fiscal year 2008-2009, the Legislature chose to discontinue the program, at least for that fiscal year. Because the Legislature sought to discontinue the program, we believe without specifically stating that funds previously appropriated may be carried forward, the Legislature sought to suspend the program's operation. See Op. S.C. Atty. Gen., June 30, 1986 (finding the Legislature's failure to fund a statutory mandate for the reduction in the pupil-teacher ratio made the statute inoperable). Moreover, as explained above, the Senate, as evidenced by legislative history, considered allowing for a carry forward, but ultimately removed this proviso from the appropriations act. Thus, the legislative history strongly supports the conclusion that the Legislature intended not to allow a carryover. Accordingly, while one could read the general carry over provision contained in Proviso 1A.44 as allowing a school district receiving funds under the program in fiscal year 2007-2008 to carry such funds over to fiscal year 2008-2009, the actions of the Legislature belie that conclusion, and we do not believe the Legislature intended to allow such a carry forward.

### Conclusion

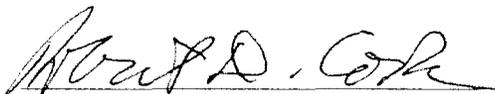
Based on our analysis above, we are of the opinion that school districts receiving funds under the program are not entitled to carry forward unexpended appropriations.

Very truly yours,

Henry McMaster  
Attorney General

  
By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Deputy Attorney General