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OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 9, 1997

Albert C. Byrd, CPCU
Manager, Property/Casualty Department
State Budget and Control Board
Office of Insurance Services
Post Office Box 11066
Columbia, South Carolina 29201

Re: Informal Opinion

Dear Mr. Byrd:

You have asked a follow-up question to the Informal Opinion written by me to you on June 4, 1997. You note that S.C. Code Ann. Sec. 15-78-140 states that political subdivisions purchasing tort liability through the Insurance Reserve Fund must purchase all its coverage through the fund. Conversely, if a political subdivision purchases its tort liability from other sources, the political subdivision shall not purchase any coverage through the Fund. You wish to know how a Charter School is impacted by these provisions.

LAW / ANALYSIS

S.C. Code Ann. Sec. 15-78-140 provides as follows:

(a) It is the duty of the Budget and Control Board to cover risks for which immunity has been waived under the provisions of this chapter by the purchase of insurance as authorized in Section 15-78-150.

(b) The political subdivisions of this State, in regard to tort and automobile liability, property and casualty insurance shall procure insurance to cover these risks for which immunity has

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been waived by (1) the purchase of liability insurance pursuant to Section 1-11-140; or (2) the purchase of liability insurance from a private carrier; or (3) self-insurance; or (4) establishing pooled self-insurance liability funds, by intergovernmental agreement, which may not be construed as transacting the business of insurance or otherwise subject to state laws regulating insurance. A pooled self-insurance liability pool is authorized to purchase specific and aggregate excess insurance. A pooled self-insurance liability fund must provide liability coverage for all employees of a political subdivision applying for participation in the fund. If the insurance is obtained other than pursuant to Section 1-11-140, it must be obtained subject to the following conditions:

(1) If the political subdivision does not procure tort liability insurance pursuant to Section 1-11-140, it must also procure its automobile liability and property and casualty insurance from other sources and shall not procure these coverage through the Budget and Control Board;

(2) If a political subdivision procures its tort liability insurance, automobile liability insurance, or property and casualty insurance through the Budget and Control Board, all liability exposures of the political subdivision as well as its property and casualty insurance must be insured with the Budget and Control Board;

(3) If the political subdivision, at any time, procures its tort liability, automobile liability, property, or casualty insurance other than through the Budget and Control Board and then subsequently desires to obtain this coverage with the Budget and Control Board, notice of its intention to so obtain this subsequent coverage must be provided the Budget and Control Board at least ninety days prior to the beginning of the coverage with the State Budget and Control Board. The other lines of insurance that the political subdivision is required to procure from the board are not required to commence until the coverage for that line of insurance expires. Any political subdivision may cancel all lines of insurance with the State Budget and Control Board if it gives ninety days' notice to the board. The Budget and Control

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Board may negotiate the insurance coverage for any political subdivision separate from the insurance coverage for other insureds.

(4) If any political subdivision cancels its insurance with the Budget and Control Board, it is entitled to an appropriate refund of the premium, less reasonable administrative cost.

(c) For any claim filed under this chapter, the remedy provided in Section 15-78-120 is exclusive. The immunity of the State and its political subdivisions, with regard to the seizure, execution, or encumbrance of their properties is reaffirmed (emphasis added).

Section 15-78-30(h) of the Tort Claims Act defines a "political subdivision" as

... the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of Section 58-25-20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

In the June 4, 1997 Informal Letter to you, I concluded that "... the Lighthouse Charter School is eligible for the purchase of IRF [Insurance Reserve Fund] coverage pursuant to Section 1-11-140 of the Code as well as other provisions of law referenced herein." I referenced therein particularly Section 59-40-50(B)(4), a part of the Charter School Act of 1996, which provides as follows:

(B) A charter school shall:

... (4) be considered a school district for purposes of tort liability under South Carolina law, except that the tort immunity shall not include acts of intentional or wilful racial discrimination by the governing body or employees of the charter school. Employees of charter schools shall be relieved of personal liability for any tort or contract related to their school to the same extent that employees of traditional public

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school districts in their school district are relieved. ...
(emphasis added).

Also referenced in the Informal Opinion was Section 59-40-40 which states:

[a]s used in this chapter:

(1) A "charter school" means a public, nonsectarian, nonreligious, nonhome-based, nonprofit corporation forming a school which operates within a public school district, but is accountable to the local school board trustees of that district, which grants its charter.

(2) A charter school:

(a) is considered a public school and part of the school district in which it is located for purposes of state law and the state constitution;

(b) is subject to all federal and state laws, and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education services;

(c) must be administered and governed by a governing body in a manner agreed to by the charter school applicant and the sponsor, the governing body to be selected in the manner provided in Sections 59-40-50(B)(8);

(d) shall not charge tuition or other charges of any kind except as may be allowed by the sponsor.

(3) "Applicant" means the person who desires to form a charter school and who files the necessary application therefor with the local school board of trustees. The applicant also must be the person who applies to the Secretary of State to organize the charter school as a nonprofit corporation.

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(4) "Sponsor" means the local school board of trustees established as provided by law, from which the charter school applicant requested its charter, and which granted approval for the charter school's existence.

(5) "Certified teacher" means a person certified by the State of South Carolina to teach in public elementary or secondary school.

(6) "Noncertified teacher" means an individual considered appropriately qualified for the subject matter taught, and who has been approved by the charter committee of the school.

(7) "Charter committee" means the governing body of a charter school and also shall be the board of directors of the corporation which must be organized.

Also referenced in the earlier opinion and relevant to your inquiry is Section 1-11-140 which provides that

(A) [t]he State Budget and Control Board, through the Office of Insurance Services, is authorized to provide insurance for the State, its departments, agencies, institutions, commissions, boards, and the personnel employed by the State in its departments, agencies, institutions, commissions, and boards so as to protect the State against tort liability and to protect these personnel against tort liability arising in the course of their employment.

(B) Any political subdivision of the State including, without limitations, municipalities, counties, and school districts, may procure the insurance for itself and for its employees in the same manner provided for the procurement of this insurance for the State, its entities, and its employees.

(C) The procurement of tort liability insurance in the manner provided is the exclusive means for the procurement of this insurance.

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Thus, the issue raised is how these various statutory provisions must be construed in the context of applicability to the procurement of tort insurance by a charter school from the Insurance Reserve Fund.

A number of principles of statutory construction are relevant here. First and foremost, is the fundamental tenet that in interpreting a statute, the primary purpose is to ascertain the intent of the legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction which is consistent with the purpose and policy expressed therein. Jones v. S.C. State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966). Words used in an enactment should be given their plain and ordinary meaning. Smith v. Eagle Const. Co., 282 S.C. 140, 318 S.E.2d 8 (1984). Moreover, it is well recognized that the enumeration of certain matters in a statute excludes others. Pa. Natl. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (S.C. App.1984). Statutes in pari materia should be construed together in order to render both operative. Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). Generally speaking, specific laws prevail over general laws and later legislation takes precedence over earlier. Lloyd v. Lloyd, 295 S.C. 55, 367 S.E.2d 153 (1988).

Here, § 59-40-50(B)(4) expressly states that "[a] charter school shall ... (4) be considered a school district for purposes of tort liability under South Carolina law" (emphasis added). Furthermore, § 15-78-30(h) defines a "political subdivision" to include a "school district" and § 1-11-140(B) provides that "[a]ny political subdivision of the state, including, without limitations ... school districts may procure insurance [against tort liability] for itself and for its employees" Thus, clearly a charter school is authorized to procure tort liability insurance from the Insurance Reserve Fund.

But, that does not mean that a charter school must purchase all insurance such as casualty and property from the IRF. The conditions contained in § 15-78-140 requiring the purchase of all insurance from the Budget and Control Board if tort liability, automobile liability or property and casualty insurance is purchased through the Board is preceded by the clause "[i]f the insurance is obtained other than pursuant to § 1-11-140." (emphasis added). A charter school would purchase tort liability insurance pursuant to § 1-11-140, however.

Moreover, a charter school is an eleemosynary corporation governed by its own board. It is considered a "political subdivision" within the meaning of § 15-78-140 for tort liability purposes. In my judgment, a charter school is unique and sui generis. Thus, I believe that all the relevant statutes must be construed as a whole, recognizing that the Charter School Act of 1996 was enacted later in time to § 15-78-140 and is specific in nature with respect to charter schools. Accordingly, in my opinion, a charter school may purchase tort liability insurance from the IRF but is not bound by the conditions of §15-

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78-140 which requires that all forms of insurance such as property and casualty be purchased from the IRF.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph