



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 19, 1997

W. Lee Roper, II, Esquire
Assistant County Attorney
Post Office Box 1547
Greenwood, South Carolina 29648

Re: Informal Opinion

Dear Mr. Roper:

This Office has received your recent opinion request. You ask for this Office's opinion on two questions:

1. Was the power of the Greenwood County Board of Education to approve the issuance of school bonds under Section 59-71-30 of the South Carolina Code of Laws devolved upon the Greenwood County Council upon the dissolution of the Greenwood County Board of Education?
2. What, if any, powers and duties of the Greenwood County Board of Education, other than those powers and duties necessary to the winding up of the Board of Education's operations and affairs, were devolved upon Greenwood County Council?

As stated in your opinion request, both of your questions involve an interpretation of the legislation which dissolved the Greenwood County Board of Education. The legislation in question is R.36 which became law without the signature of the Governor on 4/1/1997. The body of the legislation reads in pertinent part as follows:

SECTION 1. The Greenwood County Board of Education is dissolved and abolished, and all powers and duties provided for in Chapter 15 of Title 59

Received Attorney

Mr. Roper
Page 2
September 19, 1997

and necessary to the winding up of its operation and affairs are devolved upon the Greenwood County Council.

In construing a statute, the intent of the Legislature must prevail. State v. Harris, 268 S.C. 117, 232 S.E.2d 231 (1977). Legislative intent is best determined by examining the language of the statute itself. Samson v. Greenville Hosp. System, 295 S.C. 359, 368 S.E.2d 665 (1988).

After reviewing the language of this legislation, I agree with your assessment of the legislation in that it is ambiguous and may be interpreted in one of two ways. First, the legislation may be interpreted to mean that all powers and duties provided for in Chapter 15 of Title 59, as well as all powers and duties necessary to the winding up of the County Board's operation and affairs are devolved upon County Council. Second, the legislation may be interpreted to mean that only those powers and duties provided for in Chapter 15 of Title 59 which are necessary to the winding up of the County Board's operation and affairs are devolved upon County Council. An intrinsic review of the language of the legislation does not remove the ambiguity relative to the exact powers being devolved upon the Greenwood County Council and does not clarify the intent of the Legislature in this regard. Therefore, in order to determine legislative intent, focus must be paid elsewhere.

Where the language of an act gives rise to doubt or uncertainty as to legislative intent, a court may search for that intent beyond the borders of the act itself. The Lite House, Inc. v. J.C. Roy Co., Inc., 309 S.C. 50, 419 S.E.2d 817 (Ct.App. 1992). The title or caption of an act may properly be considered in aid of construction to show the intent of the legislature. Lindsay v. Southern Farm Bureau Casualty, 258 S.C. 272, 188 S.E.2d 374 (1972).

The title of the legislation reads as follows:

AN ACT TO DISSOLVE THE GREENWOOD COUNTY BOARD OF EDUCATION AND DEVOLVE ITS POWERS AND DUTIES, AS PROVIDED FOR IN CHAPTER 15 OF TITLE 59, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO COUNTY BOARDS OF EDUCATION, UPON THE GREENWOOD COUNTY COUNCIL FOR PURPOSES OF WINDING UP THE OPERATION AND AFFAIRS OF THE COUNTY BOARD OF EDUCATION.

The title seems to clarify the ambiguity present in the language of the legislation in that it states "... AND DEVOLVE ITS POWERS AND DUTIES, AS PROVIDED FOR

Mr. Roper
Page 3
September 19, 1997

IN CHAPTER 15 OF TITLE 59, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO COUNTY BOARDS OF EDUCATION, UPON THE GREENWOOD COUNTY COUNCIL FOR PURPOSES OF WINDING UP THE OPERATION AND AFFAIRS OF THE COUNTY BOARD OF EDUCATION." (emphasis added). Using the title of the legislation as an aid in determining the intent of the Legislature, it is my opinion that it was the intent of the Legislature that the phrase "... and necessary to the winding up of its operation and affairs ..." found in the body of the legislation is meant to define which of the powers found in Chapter 15 of Title 59 were to be devolved upon County Council. The legislation should not be interpreted to mean that the County Council is granted two distinct sets of powers, those found in Chapter 15 of Title 59 and any other power that is necessary to wind up the operation and affairs of the County Board of Education.

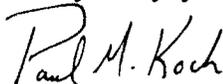
To summarize the foregoing, in my opinion, the legislation is properly interpreted to mean that the Greenwood County Council is granted only those powers found in Chapter 15 of Title 59 that are necessary to winding up the County Board of Education's operation and affairs. If this is not an accurate interpretation of the General Assembly's actual intent, the General Assembly is of course free to clarify this subject by legislation upon its return in January.

You noted in your request that if this Office determined that the County Council was granted only those powers and duties found in Chapter 15 of Title 59 necessary to wind up the County Board of Education's operation and affairs, then your two questions will have been answered. Since this Office has reached this determination, I will assume that the two specific questions raised in your opinion request have been sufficiently answered.

This letter is an informal opinion only. It has been written by a designated assistant 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 kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General