



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

September 21, 1998

Tammy D. Crooks
Special Assistant for Charter School Development
Williamsburg Enterprise Community Commission, Inc.
P.O. Box 428
Kingstree, SC 29556
(Also by fax: 803-354-3252)

Dear Ms. Crooks:

You have requested advice as to questions related to your organizations development the plans for a charter school with a grant from the State Department of Education. Those issues are separately addressed below.

S.C. Code Ann. § 59-40-40 (Supp. 1997) of the Charter School Act defines a "charter school" as 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 of trustees of that district, which grants its charter." In essence, a "charter school" is a school "that is free of many of the constraints of state regulation and that uses creative and unconventional instructional techniques and structures" Howard, "Rewarding and Sanctioning School District Performance By Decreasing or Increasing The Level of State Control," 5 Kansas Journal of Law and Public Policy, 187, 189 (Spring, 1996). See also §59-40-50 (A).

You have asked whether the school district to which your commission will apply for a charter may require that students sign binding commitments to attend the school at the time application is made. I know of nothing in the charter school law that contains such a requirement. The Act does require "evidence that an adequate number of parents, teachers, pupils or a combination thereof support the formation of a charter school." §59-40-60 (F)(3). Whether this provision requires the

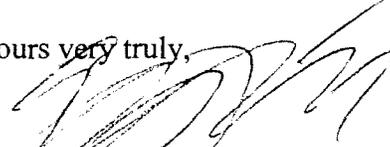
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submission of a list of interested students at the time of application is currently one of the subjects of an appeal pending before the South Carolina Supreme Court. (Beaufort County School District v. Lighthouse Charter School Committee, et al). Normally, Opinions of Office do not address matters that are the subject of litigation. Accordingly, I do not address herein whether a list must be produced at the time of application; however, even if such a list were required, I know of nothing in the charter school act that would require that students commit at the time the charter application is made. See §59-40-50 (B)(6) and (7).¹

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

If you have further questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.
Assistant Deputy Attorney General

JESJr.

¹. You have asked whether the requirement that student names be produced would violate the Family Educational Rights and Privacy Act. 20 U.S.C. §1232g. I do not address this question because it relates to the above issue on appeal; however, I do note for your information that FERPA contains exemptions for the release of information to other school officials having legitimate educational interests. §1232g (b).