

The State of South Carolina



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December 23, 1991

The Honorable Barbara S. Nielsen, Ed.D.
Superintendent of Education
1429 Senate Street
Rutledge Building
Columbia, South Carolina 29201

Dear Dr. Nielsen:

You have requested the opinion of this Office as to whether one school district may charge another school district for providing education services to a student who is residing in a foster home, group home, orphanage, or a state operated health care facility within the first district. This request relates to a proviso of the 1991-92 Appropriations Act (Act No. 171, Part I, § 28.25, 1991 S.C. Acts 1076) and to Act No. 163, 1991 S.C. Acts 678 which adds § 59-63-31 to the Code of Laws of South Carolina. These provisions are set forth as follows:

[Section 28.25]: Notwithstanding any other provision of law, the responsibility for providing a free and appropriate public education program for all children including handicapped students is vested in the public school district wherein a child of lawful school age resides in a foster home, group home, orphanage or a state operated health care facility including a facility for the treatment of mental illness or chemical dependence located within the jurisdiction of the school district. The districts concerned may agree upon acceptable local cost reimbursement. If no agreement is reached, districts providing education shall receive from the district where the child last resided before placement in a facility an additional amount equivalent to the statewide average of the local base student cost multiplied by the appropriate

pupil weighting as set forth in Section 59-20-40 of the Education Finance Act.

[Act 163]: Whereas, many South Carolina school age children must reside with, and are taken care of by, adults other than their parents; and

Whereas, the opening of legal guardianship is often difficult and costly and can delay a child's enrollment in school; and

Whereas, it is the intent of the General Assembly to allow students so residing, for reasons other than to attend a particular school and through no control of their own, to attend school within the adult's district of residence. Now, therefore...

Section 1. The 1976 Code is amended by adding:

Section 59-63-31. Children within the ages prescribed in Section 59-63-20 are also entitled to attend the public schools of a school district, without charge, if:

(1) The child resides with one of the following who is a resident of the school district...

(b) A foster parent or in a residential community-based care facility licensed by the Department of Social Services or operated by the Department of Social Services or the Department of Youth Services.

The following Rules of Statutory Construction are applicable here:

[A Court's] primary function in interpreting a statute is to ascertain the intention of the Legisla-

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ture. South Carolina Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E.2d 134 (1986).

[Statutes relating to the same subject matter] although in apparent conflict, are so far as reasonably possible construed to be in harmony with each other. Sutherland Statutory Construction, Volume 2A, Section 51.02; see Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970); Ops. Atty. Gen., July 12, 1985.

Here, the express intent of the General Assembly in Act 163 is to allow students to attend school in the district of the residence of adults other than their parents with whom they must reside for reasons other than to attend a particular school and through no control of their own. Specifically, Section 59-63-31(1)(b), as added by Act No. 163, allows a child to attend school free of charge if the child resides with a resident of the school district which is "...a foster parent or in a residential community - based care facility licensed by the Department of Social Services or operated by the Department of Social Services or the Department of Youth Services...." Therefore, the intent of the General Assembly in Section 59-63-31(1)(b) is to assure that the child is permitted to attend school free of charge under the circumstances set forth therein.

Proviso 28.25 also indicates an intent that a child be provided free education when residing in "...a foster home, group home, orphanage or state operated health care facility..." but in addition, indicates the legislative intent as to which school district pays for the costs of providing an education to the child free of charge. This intent is indicated by the numerous references therein to the financial arrangements for paying the cost of the child's education. These intentions of the Legislature as expressed in Act 163 and Proviso 28.25 are in harmony because they address different aspects of the same situation: the right of a child's attendance at school free of charge under the circumstances set forth in Act 163 and the allocation of the responsibility among the school districts for paying the costs of educating that child

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under Proviso 28.25.¹ Accordingly, Proviso 28.25 can be given full effect in terms of the financial arrangements among school districts for the payment of the educational costs and its provisions are controlling as to which school district pays. See Sutherland and Lewis v. Gaddy, supra.

This conclusion is supported by the additional rule of construction that the more specific legislative provision prevails over the more general provision unless an intent is indicated to make the more general provision controlling. Sutherland Statutory Construction, Volume 2A, Section 51.05; Criterion Insurance Company v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972). Proviso 28.25 is more specific in terms of the financial arrangements for paying the cost of the child's education.

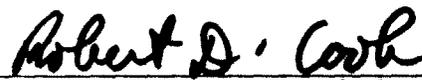
In conclusion, Proviso 28.25 is controlling as to its provisions for financial arrangements among the school districts for the costs of providing an education for a child under the circumstances set forth under that proviso. If you have any questions or need additional information, please let me know.

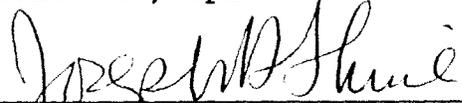
Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/jps

REVIEWED AND APPROVED:


Robert D. Cook, Administrative
Assistant, Opinions


Joseph D. Shine, Chief
Deputy Attorney General

¹ The wording of Act 163 and Proviso 28.25 differs somewhat in the facilities named therein. No opinion is expressed herein as to whether the scope of facilities covered by Proviso 28.25 differs at all from the scope covered by Act 163. In addition, no opinion is expressed herein as to other parts at the end of Proviso 28.25 that address payments by certain state institutions for children residing in those institutions.