

The State of South Carolina

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October 7, 1992

The Honorable Warren K. Giese
Senator, District No. 22
608 Gressette Building
Columbia, SC 29202

Dear Senator Giese:

You have requested an opinion of this Office as to whether the State Department of Education (State Department) may limit transportation funding for student transportation only within particular attendance zones. The following statutory and regulatory provisions which refer to the State Board of Education (State Board) and State Department appear to be of guidance here:

S. C. Code Ann. § 59-67-410(1990): The control and management of all school bus transportation in the State shall be vested in the State Board of Education.

Section 59-67-420: "...the cost of transporting pupils to regularly organized instructional classes in the district or attendance area for which school credit is given must be borne by the State. The cost of transportation for new programs conducted by the school districts must be borne by the school district until such time as the program is approved by the State Board and adequate funding for the cost of transportation for the programs is arranged...."

Section 59-67-490: "...all routes served by State owned equipment shall be subject to the approval of the Board and the local board of trustees; no such equipment shall be operated except upon routes so approved.

Section 59-67-570: "...the State Board of Education may adopt such rules and regulations as may be necessary to carry out the intent and purposes of this article...."

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Vol. 24, Reg. 43-80 (1991):...assignment of buses for new routes will be made on the basis of actual need.

Justification must be submitted showing that all buses presently assigned to the district or area are being used to the maximum before new equipment can be assigned...Buses shall be routed in the most direct way of publicly maintained highways and streets....Buses shall be routed in the most efficient manner....Written approval or disapproval of all routes will be provided by the State Department of Education...Pupils shall not be transported from one district or attendance area to another when an appropriate school is provided within the district or attendance area...Variances from Transportation Regulations may be approved by the State Department...when...clearly in the interest of safety, efficiency and economy...

My understanding is that the school district in question has adopted an attendance plan that gives middle and high school students in rezoned areas the option of attending either the new high school to which they are assigned or going to the school where they were previously zoned. I have also been informed that once a student has chosen between the schools, the decision is final.

The above State transportation statutes and regulations appear to give the State Board and State Department broad discretion as to school bus transportation and factors to be considered in approving routes appear to include the attendance zone of the student, the directness of the route, and its safety and economy. As noted, Reg.43-80 expressly states that pupils shall not be transported from one attendance area to another when an appropriate school is provided within their attendance area.

"The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 732 (1987). Although the above statutory and regulatory provisions do not appear to prohibit State funding of the transportation in question provided that it is determined to meet other statutory and regulatory criteria, a court would be likely to give great weight to the State Board's and State Department's determination of whether those criteria are met, including the requirements related to the concept an "attendance area" and the provisions of an "appropriate school" therein. See Reg.43-80. We cannot conclude in this opinion as to whether the State Board would be required to provide transportation under these circumstances because to do so would require fact-finding about such matters as

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the routes, their directness and economy which is beyond the scope of opinions of this Office and which would be a matter between the school district and the State Board to resolve. Ops. Atty. Gen. December 12, 1983.

In conclusion, although the statutory and regulatory scheme for school bus transportation in this State does not appear to prohibit the above State funding of the above transportation arrangements, whether such funding should be provided appears to fall within the discretion of the State Board and State Department under the above statutes and regulations, and a court would be likely to give great weight to any decision of the State Board in this matter. I reach this conclusion assuming that no federal court order has been issued and that no determination by an appropriate administrative body has been made that federal law requires the school district in question to impose such an attendance plan. Whether such orders or determinations would affect transportation requirements would depend upon the particular facts involved as well as federal law as it applies to attendance. Such factual matters fall outside the scope of opinions of this office. Ops. Atty. Gen. December 12, 1983. I also express no opinion as to whether such an attendance plan is desirable in that the desirability of such a plan is a fact and policy question for the school districts and the State Board of Education to resolve.

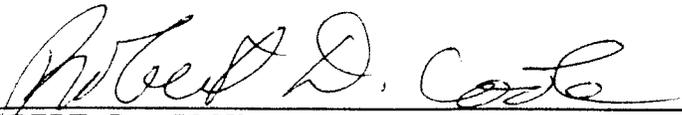
If you have any questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

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REVIEWED AND APPROVED BY:


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