ALAN WILSON
ATTORNEY GENERAL

April 28, 2015

Mr. William F. Halligan, Esquire
Post Office Box 11367
Columbia, SC 29211-1367

Dear Mr. Halligan:

On behalf of Anderson County School Districts Three, Four and Five, you have requested an opinion from this Office to clarify the construction of S.C. Code Ann. § 59-53-1880 and § 59-53-1890 and § 59-53-1900 through § 59-53-1940, all pertaining to career and technology education facilities serving more than one school district. Specifically, you have asked whether a multi-district career and technology education facility *must* be organized by a joint career and technology school board pursuant to S.C. Code Ann. § 59-53-1900 through § 59-53-1940, or alternatively, whether a career and technology education facility can be organized solely by the terms of an affiliation agreement, under S.C. Code Ann. §§ 59-53-1880 and 59-53-1890. Based on the analysis below, we are in agreement with your assessment that the formation of a career and technology school board is discretionary and that a multi-district career and technology education facility can operate solely by the terms of an affiliation agreement.

Law / Analysis

I. Legislative History

To properly address your questions, we will provide an overview of the legislative history pertaining to multi-district career and technology education facilities, which were formerly referred to as multi-district vocational educational facilities. Effective March 24, 1966, Act No. 830 was enacted "To Provide For School Districts To Affiliate With Each Other For The Purpose Of Promoting Vocational Education." Act No. 830, 1966 S.C. Acts 2144. Act 830 has been codified at S.C. Code Ann. §§ 59-53-1880 and 59-53-1890, and respectively, these Code sections read as follows:

> [f]or the purpose of *developing and maintaining* career and technology education facilities and programs to serve an area not exclusively within the boundaries of a single school district, the school districts serving this area are empowered to affiliate with each other under the terms and conditions, *not in conflict with this section and Section 59-53-1890, as they see fit*. The affiliation must be evidenced by a written instrument to be filed with the secretary and administrative officer of the State Board of Education and with the county boards of education concerned.

S.C. Code Ann. § 59-53-1880 (Supp. 2014) (emphasis added).

> "The affiliation agreement must provide:
>
> (1) for the affiliating school districts to appoint a liaison committee which shall recommend *organizational and administrative procedures* and measures to assure adequate accounting procedures;
>
> (2) procedures by which career and technology education funds appropriated by the federal, state, or county government may be applied for and received;
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> (3) procedures by which *one of the affiliating school districts may hold title to real and personal property* acquired with affiliated funds for the benefit of all affiliated school districts; and
>
> (4) that each of the affiliating school districts shall have an equity in the joint assets to the extent that the assessed tax value of the property within the school district bears to the aggregate assessed tax value of the property within the combined area of the school districts. If less than an entire school district is served by the career and technology education facilities or programs, only the area served must be considered in computing equities in joint assets.

S.C. Code Ann. § 59-53-1890 (Supp. 2014) (emphasis added).

Effective June 4, 1975, Act No. 214 was subsequently enacted "To Authorize The Creation Of Vocational Schools And School Boards By School Districts Without Regard To County Lines And Provide For Their Functions And Duties; And Provide Penalties For Damages To Property Of The Schools." Act No. 214, 1975 S.C. Acts 272. Act 214 is codified at Sections 59-53-1900 through 59-53-1940 of the Code. The salient provision of the Act, S.C. Code Ann. § 59-53-1900, provides, in part, that:

> (A) A group of two or more school districts of the State, without regard to county lines, *may* join to create career and technology school boards (board) to *construct, operate, govern, supervise, manage, and control career and technology schools.* However, the provisions of this section are not applicable to a school district with a career and technology center serving only those students residing within its geographical limits. Each board consists of six appointed members, to be apportioned among the districts joining in the creation of the board as the districts may agree. Members must be selected by the school boards of trustees from the members of their respective district school boards of trustees. The terms of the members of the board must be concurrent with their terms on the district school board of trustees. If vacancies occur or members of the boards cease to be members of their respective boards of trustees, the vacancies must be filled by members from the same school board of trustees of which the withdrawing member was a member, selected by the trustees of that district or county.

S.C. Code Ann. § 59-53-1900 (Supp. 2014) (emphasis added). The remaining provisions of Section 59-53-1900 provide for the composition of the boards and the terms of its members, vacancies, and compensation, and Sections 59-53-1910 through 59-53-1940 pertain to joint career and technology school funding, powers of the boards, fiscal year audits, and penalties for injury to or destruction of facilities of a career and technology board. See S.C. Code Ann. §§ 59-53-1910-1940 (Supp. 2014).

In 2005, the Legislature slightly amended and reenacted both sets of statutes relevant to this opinion as part of a broader Act. Act No. 49 § 16, 2005 S.C. Acts 216-19. The Act's primary purpose for all the statutes effected was to replace the term "vocational" with "career and technology" and make other technical language corrections. Id. at 202.

II. Statutory Construction

Against the background, to determine whether the creation of a multi-district career and technology school requires the formation of a career and technology school board, or, alternatively, whether a career and technology school can operate by the terms established in an affiliation agreement, it is necessary to apply the rules of statutory construction. The primary rule of statutory construction is of course to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948) (quoting Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942)).

Furthermore it has been determined that:

> [s]ections which are part of the same statutory law of the State must be construed together. In construing statutory language, the statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect, if it can be done by any reasonable construction. Statutes pertaining to the same subject matter must be harmonized if at all possible.

In the Interest of John Doe, 318 S.C. 527, 531-32, 458 S.E.2d 556, 559 (Ct. App. 1995) (internal citations omitted). When interpreting a statute, courts must presume the legislature did not intend to do a futile act. Proctor v. Dep't Health and Env't Control, 368 S.C. 279, 311, 628 S.E.2d 496, 513 (Ct. App. 2006). The legislature is presumed to intend that its statutes accomplish something. State v. Long, 363 S.C. 360, 364, 610 S.E.2d 809, 811 (2005) (citation omitted). "A statute should be so construed that no word, clause, sentence, provision or part shall be rendered superfluous." Matter of Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (quoting 82 C.J.S. Statutes § 346) (internal quotations omitted).

We also note that when construing statutes "[t]he word 'may' will be given a permissive meaning, indicating that a matter of discretion is involved, in the absence of any indication of a contrary legislative intent." 82 C.J.S. Statutes § 498 (2015). In other words, "the word 'may,' as used in a statute, ordinarily does not suggest compulsion." Id.

Applying these rules of statutory construction to the statutes we have been asked to consider, we will begin with rules that a statute should be construed so that no word, clause, sentence, provision or part shall be rendered superfluous, and that construal of statutes as a whole must be done so that each statute is given purpose and meaning. First, we point out the titles of Act 830 of 1966 and Act 214 of 1975, which constitutionally must express the overall content and subject of each Act. See S.C. Const. art III, § 17. As noted above, the title of Act 830 reads: "An Act To Provide For School Districts To Affiliate With Each Other For The Purpose Of Promoting Vocational Education." 1966 Act No. 830, 1966 S.C. Acts 2144. As the title suggests, the process for affiliation, *i.e.* "developing and maintaining vocational education facilities and programs to serve an area not exclusively within the boundaries of a single school district," follows in the body of the Act. Id. at 2144-45. As a result of Act 830, school districts were "empowered" to affiliate by "written instrument," "under such terms and conditions . . . as they [saw] fit" and not in conflict with §§ 59-53-1880 and 59-53-1890. Id. at 2145. This legislation served as the sole method for the creation and organization of multi-district vocational schools for nearly a decade, however certain multi-district vocational schools did form school boards by way of local legislation during this time. See, e.g., 1972 Act No. 1701, 1972 S.C. Acts 3322-25 (creating ". . . A Board Of Trustees To Further Develop, Maintain, Manage And Operate Vocational Education Facilities And Programs Serving An Area Composed of Anderson County School Districts Numbers One And Two And to Create A Separate Vocational District For The Purpose Of Supporting The Vocational School As Affiliated And Organized Under Act 830 of 1966").

As provided in its title, Act 214 of 1975 was subsequently enacted ". . . *To Authorize The Creation of Vocational Schools* And School Boards By School Districts Without Regard To County Lines And Provide For Their Functions And Duties; And Provide Penalties For Damages To Property Of Schools." 1975 Act No. 214, 1975 S.C. Acts 272 (emphasis added). The body of the Act thereafter provides that "[t]he school districts of the State, without regard to county lines, may join to create vocational school boards (hereinafter referred to as boards) to construct, operate, govern, supervise, manage, and control vocational schools" and further details the functions and duties of the boards. Id. at 273-75. Because school districts were already authorized to create multi-district vocational schools by Act 830 through affiliation, we believe Act 214, by again authorizing the creation of multi-district vocational schools, would be considered superfluous if the Legislature's intent was not to provide an additional means of forming the same by creation of a school board.

The necessity of construal in this manner is further illustrated by the fact that the certain sections of each Act cover the same subjects in different ways. For example, affiliation, as described in § 59-53-1880, allows school districts to join under written terms and conditions "as they see fit" to develop and maintain career and technology education facilities and programs. S.C. Code Ann. § 59-53-1880 (Supp. 2014). However, unlike the discretion provided in § 59-

53-1880, § 59-53-1900 through 59-53-1940 set out a precise organizational and governing scheme for multi-district vocational schools through the creation of a school board. S.C. Code Ann. §§ 59-53-1900-1940 (Supp. 2014). Further illustrating this point, § 59-53-1890(1) provides that affiliating school districts must include appointment of a liaison committee to "recommend organizational and administrative procedures" in their affiliation agreement whereas § 59-53-1920 already contains organizational and administrative procedures by the creation of a career and technology board with specified powers and duties. Compare S.C. Code Ann. § 59-53-1890(1) (Supp. 2014) with S.C. Code Ann. § 59-53-1920 (Supp. 2014). It seems appointment of a liaison committee to recommend organizational and administrative procedures would be meaningless if organizational and administrative procedures were already established. Also, § 59-53-1890(3) and (4) provide the specific requirement that one of the affiliated districts own property for the benefit of all affiliated school districts, with each district having an equity interest in proportion to its assessed value. S.C. Code Ann. § 59-53-1890(3)-(4) (Supp. 2014). Alternatively, pursuant to § 59-53-1920, interest in land appears to be either in the separate joint career and technology school board under subsection (7) or "in the name of the districts as tenants in common" under subsection (11). S.C. Code Ann. § 59-53-1920(7), (11) (Supp. 2014). We believe organization of a multi-district career and technology school by way of an affiliation agreement or by establishment of a career and technology board gives meaning to each of the sections discussed above and interpretation otherwise would leave one provision futile when the other was applied.

Next, we point out the Legislature's choice of the word "may" in drafting S.C. Code Ann. § 59-53-1900(A), which states that "[a] group of two or more school districts of the State, without regard to county lines, *may* join to create career and technology school boards (board) to construct, operate, govern, supervise, manage, and control career center and technology schools. . . . " S.C. Code Ann. § 59-53-1900(A) (emphasis added). In a prior opinion of this Office, we highlighted use of the word may, and our opinion of its discretionary meaning, in S.C. Code Ann. § 59-53-1900(A) to support our conclusion that special legislative action was likely not necessary for a school district to relinquish participation in a joint vocational project. See Op. S.C. Att'y Gen., 2000 WL 655460 (March 13, 2000). In line with this opinion and the rule of statutory construction that in the absence of contrary legislative intent, the word "may" will be given a permissive meaning, it is our belief that this word choice strengthens our conclusion that formation of a career and technology school board is discretionary and was intended to stand as a separate means for the creation and organization of multi-district career and technology facilities.

Finally, and most important, we believe construal in this manner is consistent with the legislative intent specified in S.C. Code Ann. § 59-1-20 pertaining generally to public education. S.C. Code Ann. § 59-1-20 states that"[t]he purpose of the South Carolina Code[1] is to provide for a State system of public education and for the establishment, organization, operation, and support of such State system." S.C. Code Ann. § 59-1-20 (2004). Furthermore, it is consistent with the rule of statutory construction provided in S.C. Code Ann. § 59-1-30 that states "if any section or part of the South Carolina Code is found to be ambiguous or otherwise subject to more than one interpretation, such section shall be liberally construed to the extent that the general purpose of

[1] S.C. Code Ann. § 59-1-10 (2004) states that "Chapters 1 to 45 and 53 to 73 of this title shall be known and may be cited as 'The South Carolina Code.'"

the entire Code and of public education may be advanced." S.C. Code Ann. § 59-1-30 (2004). Organization of a multi-district career and technology facility by way of affiliation agreement, as the affiliating districts see fit, or alternatively, by way of a career and technology school board, in our opinion, promotes the creation of multi-district career and technology schools and therefore the advancement of public education.

As you note in your correspondence, a prior opinion of this Office formerly opined on the statutory construction of S.C. Code Ann. §§ 59-53-1880, 59-53-1890, and 59-53-1900 when addressing whether the R.D. Anderson Area Vocational Center ("the Center") should operate pursuant to Section 59-53-1880, 59-53-1890, 59-53-1900 or a combination of said statutes. See Op. S.C. Att'y Gen., 1979 WL 29025 (Feb. 1, 1979). It is our understanding that the Center was established in 1967 by affiliation agreement between Spartanburg School Districts 4, 5, and 6 and later created a school board pursuant to the enabling legislation under S.C. Code Ann. § 59-53-1900. Id. at *1; Op. S.C. Att'y Gen., 2008 WL 2324824 (May 23, 2008). Looking to all three statutes, we concluded that these statutes "provide a comprehensive scheme for the establishment of such schools" and because "[n]o conflict appears between the three individual statutes" "the general legislative intention must have been that the three statutes be construed together to determine the mode of operation and governance of area vocational schools." Op. S.C. Att'y Gen., 1979 WL 29025 (Feb. 1, 1979).

As illustrated above, we believe a conflict would exist pursuant to this construal and accordingly retract the conclusion reached in our 1979 opinion and any other opinion on the subject of multi-district career and technology education facilities to the extent it suggests creation of a career and technology school board pursuant to S.C. Code Ann. § 59-53-1900 is mandatory.

Conclusion

We believe a Court would find application of the rules of statutory construction to Act 830 of 1966 and Act 214 of 1975, as codified, support the conclusion that multi-district career and technology schools can be organized either by affiliation agreement, as the affiliating districts "see fit," or by the creation of a career and technology school board. Accordingly, we retract our February 1, 1979 opinion and any other opinion on the same subject in so far as it suggests creation of a career and technology school board pursuant to S.C. Code Ann. § 59-53-1900 is mandatory.

While we believe the conclusions reached in this opinion would be consistent with how a court would rule and the legislative intent in enacting Acts 830 and 214, we also believe further clarification from our courts or the Legislature would be largely beneficial in definitively answering the many questions pertaining to this body of statutes that have been asked of our Office over the years.

Should you have any additional questions, please do not hesitate to contact our Office.

Very truly yours,

Anne Marie Crosswell

Anne Marie Crosswell
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
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