



ALAN WILSON
ATTORNEY GENERAL

July 28, 2015

The Honorable Mike Fair, Chairman
Senate Committee on Corrections & Penology
211 Gressette Senate Office Building
Columbia, SC 29202

Dear Chairman Fair:

Our Office has received your request for an opinion regarding the legal definition of “alternative structure” in section 63-11-1720(F)(1) of the South Carolina Code. You question whether it means “an existing structure that would retain the same character” or “an entirely new structure.”

LAW/ANALYSIS:

The applicable statute, section 63-11-1720(F)(1), provides for the creation of the Office of First Steps Study Committee and its duties. It states:

[t]here is created the Office of First Steps Study Committee to review the structure, responsibilities, governance by an organization exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, and administration of the Office of First Steps. The goal of the study committee is to guarantee that children from birth to school-age receive needed services from the Office of First Steps in the most effective way through coordination with other agencies that serve the same population. Also, the study committee shall determine whether the services provided by the Office of First Steps are provided in the most cost-effective and direct manner to entities served by the Office of First Steps, including County First Steps Partnerships Boards. The study committee shall evaluate the structure and costs of the Office of First Steps becoming an independent agency and make a recommendation as to whether the Office of First Steps should become an agency, remain as a program at the Department of Education, be relocated within a state agency other than the Department of Education, or **any other alternative structure the study committee deems fit.** The study committee shall also address the issues concerning the governance of an organization exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986 relative to the structure recommended by the study committee. When making its recommendation as to the structure, the study committee must include an analysis of the costs associated with a change in structure. Such costs

include, but are not limited to, personnel, data security, data management, and fiscal services.

S.C. Code Ann. § 63-11-1720(F)(1) (1976 Code, as amended) (emphasis added).

To provide you with some background information, we explained in a prior opinion that First Steps to School Readiness is:

[a]ccording to Section 59-152-10 of the South Carolina Code, First Steps is “a comprehensive, results-oriented initiative for improving early childhood development and education services[.]” The initiative seeks to improve these services by providing both public and private funds to such an end, as well as increasing their accessibility to parents of young children. S.C. Code Ann. § 59-152-10 (2014 Supp.). As detailed in Section 59-152-20 of the Code and noted in our prior opinions:

The purpose of the First Steps initiative is to develop, promote, and assist efforts of agencies, private providers, and public and private organizations and entities, at the state level and the community level, to collaborate and cooperate in order to focus and intensify services, assure the most efficient use of all available resources, and eliminate duplication of efforts to serve the needs of young children and their families.

Op. S.C. Atty. Gen., 2013 WL 2121457 (May 6, 2013).

The Legislature created the Office of South Carolina First Steps to School Readiness and granted it the following responsibilities:

- (1) provide to the board [South Carolina First Steps to School Readiness Board of Trustees]¹ information on best practice, successful strategies, model programs, and financing mechanisms;
- (2) review the local partnerships² plans and budgets in order to provide technical assistance and recommendations regarding local grant proposals and improvement in meeting statewide and local goals;
- (3) provide technical assistance, consultation, and support to local partnerships to facilitate their success including, but not limited to,

¹ The South Carolina First Steps to School Readiness Board of Trustees “shall oversee and be accountable for the South Carolina First Steps to School Readiness initiative.” S.C. Code Ann. § 59-152-40 (1976 Code, as amended).

² “Each county must be represented by a Local First Steps Partnership Board and each local board must provide services within every county it represents.” S.C. Code Ann. § 59-152-60 (1976 Code, as amended).

model programs, strategic planning, leadership development, best practice, successful strategies, collaboration, financing, and evaluation;

- (4) evaluate each program funded by the South Carolina First Steps to School Readiness Board of Trustees on a regular cycle to determine its effectiveness and whether it should continue to receive funding;
- (5) recommend to the board the applicants meeting the criteria for First Steps partnerships and the grants to be awarded;
- (6) submit an annual report to the board by December first which includes, but is not limited to, the statewide needs and resources available to meet the goals and purposes of the First Steps to School Readiness initiative, a list of risk factors the office considers to affect school readiness, identification of areas where client-level data is not available, an explanation of how First Steps programs reach the most at-risk children, the ongoing progress and results of the First Steps to School Readiness initiative statewide and locally, fiscal information on the expenditure of funds, and recommendations and legislative proposals to further implement the South Carolina First Steps to School Readiness initiative statewide;
- (7) provide for ongoing data collection. Before June 30, 2015, the board shall develop a response to the November 2014 external evaluation of each prevalent program and the overall goals of the initiative, as provided in Section 59-125-160. The office shall contract with an external evaluator to develop a schedule for an in-depth and independent performance audit designed to measure the success of each prevalent program in regard to its success in supporting the goals of the State Board and those set forth in Section 59-152-20 and Section 59-152-30. Results of all external performance audits must be published in the First Steps annual report; and
- (8) coordinate the First Steps to School Readiness initiative with all other state, federal, and local public and private efforts to promote good health and school readiness of young children and support for their families.

S.C. Code Ann. § 59-152-50 (1976 Code, as amended).

To answer your question, we must look to the rules of statutory interpretation. We have previously opined in regard to statutory construction that:

“[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000). “[Courts] will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute’s operation.” Harris v. Anderson County Sheriff’s Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009). “If a statute’s language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning.” Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 472 (2007). “[S]tatutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable.” State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007). “While it is not conclusive, it is proper in construing a statute to consider legislation dealing with the same subject matter as an aid in construction.” Hartford Ace. & Indem. Co. v. Lindsay, 273 S.C. 79, 85, 254 S.E.2d 301, 304 (1979). “In construing a statute, [courts] will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.” Lancaster County Bar Ass’n v. S.C. Com’n on Indigent Defense, 380 S.C. 219, 222 670 S.E.2d 371, 373 (2008).

Op. S.C. Atty. Gen., 2013 WL 6516331 (December 2, 2013).

To determine the Legislature’s intent with regard to section 63-11-1720(F)(1), we must look at the plain meaning of the words of the statute. Since the term “alternative structure” does not appear to be defined by South Carolina law, we will consider each word separately in the phrase “any other alternative structure [the study committee] deems fit.”³ According to Black’s Law Dictionary, “the words ‘any other’ following the enumeration of particular classes⁴ are to be read as ‘other such like’ and include only others of like kind or character.” Black’s Law Dictionary 94 (6th ed. 1990). The word “alternative” is defined as “giving an option or choice; allowing a choice between two or more things or acts to be done.” Id. at 78. “Structure” means “any construction, or any production or piece of work artificially built up or composed of parts joined together in some definite manner. . . .” Id. at 1424. “Deem” means “to...consider; adjudge; believe...determine...construe. . . .” Id. at 415. Finally, “fit” is defined as suitable or appropriate. . . .” Id. at 637.

Reviewing the definitions, it is our opinion that the Legislature intends for the Study Committee to have discretion in the type of structure it recommends for the Office of First Steps. However, such structure

³ See S.C. Code Ann. § 63-11-1720(F)(1), supra.

⁴ A “class” is “a group of persons, things, qualities, or activities, having common characteristics or attributes. . . .” Black’s Law Dictionary 248 (6th ed. 1990).

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must be similar or related in some manner to the ones enumerated in section 63-11-1720(F)(1) and can not be an entirely new structure.

CONCLUSION:

The term "alternative structure" does not appear to be defined by South Carolina law. Based upon the definitions of the words in the phrase "any other alternative structure [the study committee] deems fit," it is our opinion that the Legislature intends for the Office of First Steps Study Committee to have discretion in the type of structure it recommends for the Office of First Steps. However, such structure must be similar or related in some manner to the ones enumerated in section 63-11-1720(F)(1) and can not be an entirely new structure.

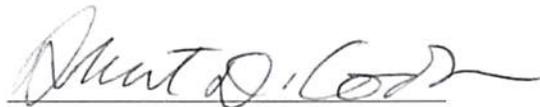
Please be aware that this is only an opinion as to how this Office believes a court would interpret the law in this matter.

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General