

1979 WL 43166 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 13, 1979

**\*1 Subject: Education, Students—Handicapped**

A school district's employee benefit program must be excluded from foundation program funds under the Education Finance Act if that program or another program in that district providing the same class of benefits is paid, at least in part, by the State. Money for such excluded benefits should be listed in the fiscal report to the Department of Education in a manner which would permit them to be separated from foundation program funds.

George L. Schroeder  
Director

Legislative Audit Council

Question:

Whether funds for employee benefits provided by school districts may be included in the money districts use to meet expenditure requirements under the Education Finance Act.

Statutes Cited:

The Education Finance Act, [§ 59-20-10, et seq. of the Code of Laws of South Carolina \(1976\)](#), as amended; Act No. 199, § 29, Items VI and VII, Acts and Joint Resolutions of South Carolina, 1979.

Discussion:

The Education Finance Act, [§ 59-20-10, et seq.](#) of the Code of Laws of South Carolina (1976), as amended, in § 59-20-60(4) requires each school district board of trustees to submit an annual fiscal report to the State Board of Education (Board) in accordance with a format approved by the Board. The current format is used, in part, for verification of Finance Act expenditures and for validation of the Finance Act's weighting system. It includes employee benefits (account number 200) as general fund expenditures for each of the various program areas. The general fund expenditure totals for each program area are then used, in part, to calculate the school district's compliance with § 59-20-50(3). This section requires that '[e]ighty five percent of the funds appropriated through state and local effort for each weighted classification . . . be spent in direct and indirect aid in the specific area of the program planned to serve those children who generated the funds.' [See](#) § 59-20-40. Thus, the general fund expenditures must comply with this eighty five percent requirement and the inclusion of employee benefits in the general fund totals helps the district achieve that level. This practice, therefore, allows employee benefit funds in Account 200 to be included among the foundation program funds. [See](#) § 59-20-20(1).

Section § 59-20-20(2) excludes 'employee benefits' from the foundation program. Thus, the question has arisen as to whether including the Account 200 employee benefits in the calculations for the 85% requirement is violative of the Finance Act.

Resolution of this question presented here depends upon an analysis of the definition of 'employee benefits' which is included in the Finance Act as follows:

. . . those benefits received by employees of the State public school systems and paid at least in part by the State, such as retirement, social security and health insurance. § 59-20-20(2)(g).

The Act broadly sets out retirement, social security and health insurance as examples of benefits but never refers to particular benefit programs. It indicates that 'benefit' means classes of benefits such as health insurance rather than particular benefit programs within a class. Thus, if a program within a class of benefits is '. . . paid at least in part by the State', then that program and any other programs in that class must be excluded from the Foundation program under § 59-20-20(g). For example, if the State, at least in part, funded a benefit program within a class such as health insurance,<sup>1</sup> then that program and any additional local health insurance program of a school district would have to be excluded as being § 59-20-20(g) benefits even though only local monies were used for the local program. This interpretation is consistent with the legislative purposes behind the Finance Act which include providing minimum educational programs and services and funding for them. See § 59-20-30. Funding under the Finance Act would not be needed for employee benefits which are separately funded by the State. Allowing additional funding under the Finance Act for these benefits could direct money from educational programs which do not have funding apart from the Finance Act.

\*2 Section 59-20-20(2) makes clear that 'employee benefits' coming within the above definition must be excluded from the foundation program. Thus, Department of Education accounting procedures should allow for the identification of those benefits so that they may be excluded. Conclusion:

Based upon the foregoing analysis of the Education Finance Act, the opinion of this Office is that a school district's employee benefit program must be excluded from foundation program funds if that program or another program in that district providing the same class of benefits is paid, at least in part, by the State. Thus, money for such excluded benefits should be listed in the fiscal report to the Department of Education in a manner which would permit them to be separated from foundation program funds.

J. Emory Smith, Jr.  
State Attorney

#### Footnotes

<sup>1</sup> A sum of money has been separately appropriated for the Department of Education for employee benefits. See Act No. 199, § 29, Items VI and VII, Acts and Joint Resolutions of South Carolina, 1979, p. 649.

1979 WL 43166 (S.C.A.G.)