

1979 S.C. Op. Atty. Gen. 150 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-107, 1979 WL 29111

Office of the Attorney General

State of South Carolina

Opinion No. 79-107

September 6, 1979

***1 Subject: Education, Teachers**

Act No. 187 of 1979 does not require a prospective school teacher to retake a teaching area examination of the National Teacher Examinations as one qualification for the Professional Certificate if such individual attained the minimum score established by the State Board of Education for a particular teaching area examination prior to August 2, 1979.

To: Charlie G. Williams
State Superintendent of Education

Question:

May a candidate for teacher certification in South Carolina rely on a score attained on a teaching area examination of the National Teacher Examinations obtained prior to the effective date of Act No. 187 of 1979, which Act became effective on August 2, 1979?

Statutes and Cases:

Act No. 187 of 1979; [§ 59–25–110, Code of Laws of South Carolina](#), 1976; R43–42, Code of Laws of South Carolina, 1976; 73 Am. Jur. 2d [Statutes](#) §§ 153 and 156; [State ex rel. McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E. 2d 778 (1964).

Discussion:

The South Carolina General Assembly has enacted Act No. 187 of 1979 (hereinafter the Act), an Act to provide for the training, certification, employment, and evaluation of public educators. The specific portion of the Act in question is Section 3(i), which states:

From the effective date of this act, use the specific teaching area examinations of the National Teacher Examinations for certification purposes. The qualifying scores on the area examinations shall be set at the same level at which they are now set. The qualifying scores may be adjusted if new legal requirements or validity studies indicate such adjustments are necessary.

In an area in which an area teaching examination of the National Teacher Examinations is not available, use the teaching examinations developed in accordance with Section 3 for certification purposes as soon as those examinations are prepared, validated and ready for use.

From the effective date of this Act until July 1, 1981, or as soon as the teaching examinations are prepared and validated, use the Common Examinations of the National Teacher Examination for certification in those areas in which area teaching examinations of the National Teacher Examinations are not available. The qualifying score on the common examinations shall be set at the same level at which it is now set. The qualifying score may be adjusted if new legal requirements or validity studies indicate such adjustments are necessary.

The Act is essentially a statutory limitation upon the broad authority of the State Board of Education pursuant to § 59–25–110 to ‘formulate and administer a system for the examination and certification of teachers.’ The subsection in question, while restricting the use of the National Teacher Examinations (hereinafter NTE) after August 2, 1979, is silent as to the effect of a candidate for certification attaining the requisite minimum qualifying score on an area examination prior to the effective date of the Act. The Act, however, did not repeal or amend § 59–25–110; therefore, the State Board of Education retains specific authority to promulgate rules and regulations to administer a system of examination and certification of teachers not inconsistent with the provisions of the Act. Pursuant to this regulatory authority, the State Board of Education has promulgated R43–62(f)(1), which states:

*2 National Teacher Examinations—An applicant is eligible to take the National Teacher Examinations as many times as he desires. The highest score will be used by the Office of Teacher Education and Certification; however, the State Board of Education reserves the right to require another examination of any applicant before the change in score is added to the teacher's file.

The State Board of Education did not include any time limitations upon which the Office of Teacher Education and Certification may accept the highest score made on the NTE. Further, there is no apparent inconsistency between R43–62 and the Act, in that the regulation is not couched in terms of accepting the highest composite score on the NTE, as opposed to individual scores on either the common examination or a teaching area examination. Thus, the State Board of Education has adopted a policy to accept the highest score attained on the NTE, regardless of the number of times the examination is taken, without any limitation on the date of taking such examination.

While the express language of Section 3(i) of the Act is silent on the precise question here, resort to established principles of statutory construction are useful. To the extent that the Act itself does not address the subject question, the Act is somewhat ambiguous, particularly in that subsection (i) begins by stating, ‘From the effective date of this act . . .’ The following rules of statutory construction from 73 Am Jur. 2d Statutes §§ 153 and 156 respectively, and useful here: In construing a law of doubtful meaning or application, the policy which induced its enactment, or which was designed to be promoted thereby, is a proper subject for consideration, where such policy is clearly apparent or can be legitimately ascertained. Indeed, the proper course in all cases is to adopt that sense of the words which promotes in the fullest manner the policy of the legislature in the enactment of the law, and to avoid a construction which would alter or defeat that policy. Even the literal meaning of the terms employed should not be suffered to defeat the manifest policy intended to be promoted.

In this respect, it has been declared that the reason of the law, as indicated by its general terms, should prevail over its letter when the plain purpose of the Act would be defeated by strict adherence to its verbiage.

See also, [State ex rel. McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E. 2d 978 (1964). Taken as a whole, the apparent intention of the General Assembly was to restrict use of the National Teacher Examinations for certification purposes in South Carolina. The General Assembly has determined that the Common Examination portion of the NTE should not be used for certification purposes, ‘as soon as the teaching examinations are compared and validated . . .’ The ‘teaching examinations’ refers to a state prepared certification examination as required in Section 3(b)(2) of the Act. The area teaching examinations of the NTE are specifically retained for use in teacher certification by the Act with qualifying scores on such examination set ‘at the same level at which they are now set.’ This provision will require the State Board of Education to adopt specific area teaching examination scores, in that the only scores presently in State Board of Education regulations are the composite scores for both the teaching area examination and the common examination.

In any event, from its effective date, the policy dictated by the General Assembly is that prospective teachers attain a minimum score on one rather than two examinations of the NTE. Finally, nothing in the Act suggests that the General Assembly intended that prospective teachers who heretofore have successfully passed an area teaching examination of the NTE be required to retake the same area examination after the effective date of the Act.

Conclusion:

*3 Based upon the foregoing authorities and discussion, the Opinion of this Office is that Act No. 187 of 1979 does not restrict the use of scores attained on a teaching area examination of the NTE prior to August 2, 1979, for

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