



ALAN WILSON  
ATTORNEY GENERAL

September 7, 2017

The Honorable Henry McMaster  
Governor of the State of South Carolina  
1100 Gervais St.  
Columbia, South Carolina 29201

Dear Governor McMaster:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

I am requesting an Attorney General's opinion to clarify the question of whether funds appropriated in the 2017-18 General Appropriations Act (H. 3720) designated via proviso for the South Carolina Public Charter School District (SCPCSD) may be transferred by the South Carolina Department of Education (SCDOE) from the SCPCSD line item to the line item for an Independent Institution of Higher Education (IIHE) registered with the SCDOE as a "Sponsor" of charter schools, as defined in S.C. Code § 59-40-40(4).

By way of background, on July 10, 2017, an IIHE registered with the SCDOE as a "Sponsor" of charter schools, as defined in S.C. Code § 59-40-40(4). Subsequently, two charter schools currently chartered under the SCPCSD requested to transfer their charters from the SCPCSD to the IIHE.

In addition to your letter, this Office received correspondence in support of such a funding transfer from the SCPCSD to an IIHE. The correspondence suggests that portions of H. 3720 authorize reallocation or adjustment of excess funds as follows:

In the applicable section regarding state education funds, the following language appears:

**SECTION 1 - H630 - DEPARTMENT OF EDUCATION**

1.3. (SDE: EFA Formula/Base Student Cost Inflation Factor) To the extent possible within available funds, it is the intent of the General Assembly to provide for one hundred percent of full implementation of the Education Finance Act to include an inflation factor projected by the Revenue and Fiscal Affairs Office to match inflation wages of public school employees in the Southeast. The base student cost for the current fiscal year has been determined to be \$2,425. For the current fiscal year, the total pupil count is projected to be 721,401. The average per pupil funding is projected to be \$6,120 state, of which \$2,339 comes from the EFA, \$1,294 federal, and \$5,726 local. This is an average total funding level of \$13,140 excluding revenues of local bond issues. For the current fiscal year the South Carolina Public Charter School District and any institution of higher education sponsoring a public charter school shall

receive and distribute state EFA funds to the charter school as determined by one hundred percent of the current year's base student cost, as funded by the General Assembly multiplied by the weighted students pupils enrolled in the charter school, which must be subject to adjustment for student attendance.

H. 3720, General Appropriations Bill for Fiscal Year 2017-2018, (Ratified Version)  
PART IB (emphasis added).

This would appear to specifically allow for the funds to be allocated to either the SCPCSD or an IIHE, according to the school's attendance numbers, regardless of which sponsor the school began the fiscal year with, or continues under.

In any event, the next section regarding charter school funding includes explicit authority for SCDOE to transfer funds from one district or line item to another based on projected excess and deficit.

SECTION 1A - H630 - DEPARTMENT OF EDUCATION-EIA

1A.1. (SDE-EIA: Prohibition on Appropriation Transfers) The amounts appropriated herein for aid to subdivisions or allocations to school districts shall not be transferred or reduced and must be expended in accordance with the intent of the appropriation. However, transfers are authorized from allocations to school districts or special line items with projected year-end excess appropriations above requirements, to allocations to school districts or special line items with projected deficits in appropriations.

H. 3720, General Appropriations Bill for Fiscal Year 2017-2018, (Ratified Version)  
PART IB (emphasis added).

If a school transfers its charter to a new sponsor, it appears as though its students would therefore be included in a new count for the new sponsor, and such new count would necessarily create a projected deficit in the new sponsor's (the IIHE's) special line item and a projected excess of funds in old sponsor's (SCPCSD's) line item, thereby allowing a transfer of funds by SCDOE from the SCPCSD line item to the line item for IIHEs.

Law/Analysis

As an initial matter, we note that the State Superintendent of Education ("State Superintendent") administers the SCDOE and has "general supervision over and management of all public school funds provided by the State and Federal Governments." S.C. Code Ann. § 59-3-30(2). However, the State Superintendent's authority over the supervision and management of State funds must be consistent with the expressed intent for such expenditures where provided by law. To determine whether the State Superintendent's authority to manage state funds allows for the transfer of funds from the SCPCSD to an IIHE, we will apply the rules of statutory construction to the South Carolina Charter Schools Act of 1996 and the 2017-18 General Appropriations Act (the "Appropriations Act").

Statutory interpretation of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) (“The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible.”). Where a statute's language is plain and unambiguous, “the text of a statute is considered the best evidence of the legislative intent or will.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

The Supreme Court of South Carolina has stated, however, that where the plain meaning of the words in a statute “would lead to a result so plainly absurd that it could not have been intended by the General Assembly... the Court will construe a statute to escape the absurdity and carry the [legislative] intention into effect.” Duke Energy Corp. v. S. Carolina Dept of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) (“[C]ourts are not confined to the literal meaning of a statute where the literal import of the words contradicts the real purpose and intent of the lawmakers.”). “A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers.” State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015).

When two statutes are found incapable of being reasonably reconciled, the choice of which statute prevails is guided by the following principles:

[W]here two statutes are in conflict, the more recent and specific statute should prevail so as to repeal the earlier, general statute. Hodges v. Rainey, *id.* at 85, 533 S.E.2d at 581; Stone v. City of Orangeburg, 313 S.C. 533, 535, 443 S.E.2d 544, 545 (1994).

Furthermore, “[w]here there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” Spectre, LLC v. S.C. Dept. of Health and Env'tl. Control, 386 S.C. 357, 688 S.E.2d 844, 851 (2010).

Denman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010). With these principles in mind, we turn to the relevant statutes and legislative acts to determine whether there is a conflict and, if so, how our state courts would likely resolve such a conflict.

The formation and management of charter schools is governed by the South Carolina Charter Schools Act of 1996 (the “Charter Schools Act”), S.C. Code Ann. §§ 59-40-10 to -240. The Charter Schools Act's definition of “charter school” has been amended multiple times since it was enacted. Act 341, § 1 of 2002 defined “charter school” as “a public, nonsectarian, nonreligious, nonhome-based, nonprofit corporation forming a school which operates within a public school district, but is accountable to the local school board of trustees of that district, which grants its charter.” S.C. Code Ann. § 59-40-40(1)(2004) (emphasis added). The definition was amended by 2006 Act No. 274, § 1 to add that a charter school may operate in either “a public school district or the South Carolina Public Charter School District” and to allow for charter schools to “offer[] virtual services.” Finally, as it currently appears in the South Carolina Code, 2012 Act No. 164, § 5 amended the definition of “charter school” to read as follows:

[A] public, nonreligious, nonhome-based, nonprofit corporation forming a school that operates by sponsorship of a public school district, the South Carolina Public Charter School District, or a public or independent institution of higher learning, but is accountable to the board of trustees, or in the case of technical colleges, the area commission, of the sponsor which grants its charter....

S.C. Code Ann. § 59-40-40(1) (Supp. 2016) (emphasis added). Additionally, a charter school “is... considered a public school and part of the South Carolina Public Charter School District, the local school district in which it is located, or is sponsored by a public or independent institution of higher learning.” S.C. Code Ann. § 59-40-40(2)(a) (Supp. 2016).

The Charter School Act further defines “sponsor” to mean:

[T]he South Carolina Public Charter School District Board of Trustees, the local school board of trustees in which the charter school is to be located, as provided by law, a public institution of higher learning as defined in Section 59-103-5, or an independent institution of higher learning as defined in Section 59-113-50, from which the charter school applicant requested its charter and which granted approval for the charter school's existence. Only those public or independent institutions of higher learning, as defined in this subsection, who register with the South Carolina Department of Education may serve as charter school sponsors, and the department shall maintain a directory of those institutions....

S.C. Code Ann. § 59-40-40(4) (Supp. 2016) (emphasis added).<sup>1</sup> The Charter School Act provides that the contract between a charter school and its sponsor may be terminated before the end of its term, and the charter school “may seek application for the length of time remaining on its original contract from another sponsor.” S.C. Code Ann. § 59-40-115 (Supp. 2016). Where a charter school is sponsored by the SCPCSD or an IHE, either public or independent, the sponsor “shall receive and distribute state funds to the charter school as provided by the General Assembly.” S.C. Code Ann. § 59-40-140(B) (Supp. 2016). When read together, the statutes’ plain language demonstrates the General Assembly’s intent to allow a charter school to transfer its contract to an IHE and for the IHE to receive and distribute state funds to the charter school.

This Office’s August 21, 2012 opinion urged the SCDOE to construe its administrative authority in accordance with the General Assembly’s intent to support innovation and diversity in public education as follows:

[T]he General Assembly, through the enactment of the Charter Schools Act, clearly intended to promote the creation, availability, use, and development of charter schools. As stated in [S.C. Code Ann. §] 59-40-30(A), the legislative intent of the Charter Schools Act was “to create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of educating all children within the public school system.” Furthermore, the General Assembly mandated

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<sup>1</sup> It is this Office’s understanding that, as of the date of this opinion, Erskine College is the only IHE registered with the S.C. Department of Education as a charter school sponsor. S.C. State Dept. of Educ., *Institution of Higher Education Charter Sponsors* (Sept. 6, 2017), <https://ed.sc.gov/districts-schools/school-choice-personalized-learning/charter-schools-program/charter-school-sponsors-authorizers/ihe-sponsor-listing-july-2017/>.

that the provisions of the Charter Schools Act “be interpreted liberally to support the findings and goals of this chapter and to advance a renewed commitment by the State of South Carolina to the mission, goals, and diversity of public education.” Id. While we reiterate that the SCDOE's performance of its administrative duties and responsibilities must conform to the law, we also advise the SCDOE to ensure that it carries out such duties and responsibilities in a manner consistent with the intent of the General Assembly as described above. To this end, the SCDOE should do everything administratively possible, to the extent consistent with the law, to promote the creation, availability, use, and development of charter schools to ensure that [such] schools... are given the opportunity to open their doors and operate successfully.

Op. S.C. Atty. Gen., 2012 WL 3875117, at \*13 (August 21, 2012). It remains this Office’s opinion that the SCDOE, through the State Superintendent, should act within its administrative authority, including the authority to administer state funds for public education, to support the development and continued operation of the State’s charter schools.

Next, we examine the 2017-18 General Appropriations Act to determine whether the SCDOE would act within its authority if it transfers funds allocated to the SCPCSD to an IIHE charter school sponsor. As described in your letter, in relevant part, the Appropriations Act allocates funds provided under the Education Finance Act (EFA), S.C. Code Ann. §§ 59-20-10 to -80, and the Education Improvement Act (EIA), S.C. Code Ann. §§ 59-21-420 to -450, to the SCDOE for disbursement to charter schools and school districts. The South Carolina Supreme Court described the two acts as the primary mechanisms of providing state funding for public educations. Abbeville Cty. Sch. Dist. v. State, 335 S.C. 58, 64, 515 S.E.2d 535, 538 (1999) (“In South Carolina, public education is funded by the federal, state, and local governments. State funding of education is done primarily through mechanisms established by two acts: [the Education Finance Act (EFA)] and the Education Improvement Act (EIA).”).

Sections 1.3, (SDE: EFA Formula/Base Student Cost Inflation Factor), and 1A.1, (SDE-EIA: Prohibition on Appropriation Transfers), of the Appropriations Act are the provisions specifically detailing how the funds provided under the EFA and EIA are to be allocated. As described above, Section 1.3 describes how EFA funds are provided to “the South Carolina Public Charter School District and any institution of higher education sponsoring a public charter school” and such funds are “subject to adjustment for student attendance.” Id. The plain language of Section 1.3 clearly states that the “sponsor” of the charter school is the recipient of the EFA funds which then distributes such funds to the charter school. Id. Section 1.3 does not restrict the distribution of EFA funds to the sponsors of charter schools as of the effective date of the act. In fact, this Office understands that at the time the 2017-18 General Appropriations Act, no IHE was a sponsor of a charter school.<sup>2</sup> Because Section 1.3 lists an IHE as a potential recipient of EFA funds, the Appropriations Act implicitly anticipates that a charter school may apply to transfer its contract to an IHE to act as its sponsor during the fiscal year. Therefore, it is this Office’s opinion that a court would likely find the Appropriations Act demonstrates the General Assembly’s intent to authorize the SCDOE to transfer EFA funds to an IIHE which sponsors a charter school.

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<sup>2</sup> Paul Bowers, *South Carolina's charter school authorizer standards raise concerns among charter advocates, scholars*, POST AND COURIER, [http://www.postandcourier.com/news/south-carolina-s-charter-school-authorizer-standards-raise-concerns-among/article\\_6d2dfd38-76ed-11e7-987a-5796b3b7f7d9.html](http://www.postandcourier.com/news/south-carolina-s-charter-school-authorizer-standards-raise-concerns-among/article_6d2dfd38-76ed-11e7-987a-5796b3b7f7d9.html) (last visited Sept. 6, 2017) (“Erskine College announced July 27 that it had become the first private college in the state to serve as a public charter school authorizer.”).

Section 1A.1 (SDE-EIA: Prohibition on Appropriation Transfers) describes how EIA funds are provided “for aid to subdivisions or allocations to school districts.” Generally, transfers of EIA funds are prohibited and “must be expended in accordance with the intent of the appropriation.” *Id.* However, Section 1A.1 creates a limited exception for transfers “from allocations to school districts or special line items with projected year-end excess appropriations above requirements, to allocations to school districts or special line items with projected deficits in appropriations.” In fact, there are several line items with the Appropriations Act which are intended to benefit charter schools. See §§ 1A.9 (SDE-EIA: Teacher Supplies); 1A.24 (SDE-EIA: Students at Risk of School Failure) (“Public charter schools, the Palmetto Unified School District, and the Department of Juvenile Justice must also receive a proportionate per pupil allocation based on the number of students at academic risk of school failure served.”). Further, Section 1A.57, (SDE-EIA: Charter School Funding-Chartered by Institution of Higher Education), directs how EIA funds are allocated to charter schools which are sponsored by an IHE as follows:

Pupils enrolled in a brick and mortar charter school authorized by an approved institution of higher education located in this state shall receive \$3,600 per weighted pupil and pupils enrolled in a virtual charter school authorized by an approved institution of higher education located in this state shall receive \$1,900 per weighted pupil from the funds appropriated in Part IA, Section VIII.G. - South Carolina Public Charter School - Institution of Higher Education....

H. 3720, General Appropriations Bill for Fiscal Year 2017-2018, (Ratified Version) PART IB. Similarly, Section 1A.52 (SDE-EIA: South Carolina Public Charter School District Funding) provides EIA “funds appropriated in Part IA, Section VIII.G – South Carolina Public Charter School District” on the basis of pupil enrollment. Because Section 1A.57 identifies a specific line item to fund charter schools sponsored by an IHE, a court would likely find that the exception which provides for reallocating funds between line items in Section 1A.1 allows the SCDOE to transfer funds from the line item for the SCPCSD if it has projected year-end excess appropriations to the line item for IHE charter school sponsors if it has a projected year end deficit.

While it is this Office’s opinion that a court would likely find Section 1.3 and 1A.1 of the Appropriations Act authorize the SCDOE to transfer EFA and EIA funds to an IIHE which sponsors a charter school, there are provisions within the Appropriations Act which may support a contrary conclusion. Section 1.1 (SDE: Appropriation Transfer Prohibition) creates a prohibition on allocation transfers as follows:

The amounts provided herein for aid to subdivisions, allocations to school districts, or special line items shall not be transferred and must be expended in accordance with the intent of the appropriation, except that the department may transfer funds that are deducted and retained from a school district’s transportation allocation to reimburse the department for the cost of unauthorized mileage. This transfer must be agreed upon by both the school district and the department. Those funds may be transferred into the department’s school bus transportation operating account.

H. 3720, General Appropriations Bill for Fiscal Year 2017-2018, (Ratified Version) PART IB (emphasis added). This general prohibition on transfers allows a sole exception for transportation allocations. *Id.* However, both Sections 1.3 and 1A.1 provide for “adjustments” and “transfers” of the funds provided therein. If these sections are determined to conflict, a court would likely construe Sections 1.3 and 1A.1

to prevail as they are more specific to EFA and EIA fund allocations than the general prohibition on allocations to the SCDOE in Section 1.1. See Denman v. City of Columbia, 387 S.C. at 138, 691 S.E.2d at 468–69. Thus, consistent with its duty to supervise and manage all public school funds provided by the State government, Sections 1.3 and 1A.1 authorize the SCDOE to transfer EFA and EIA funds to an IIHE which sponsors a charter school.

### Conclusion

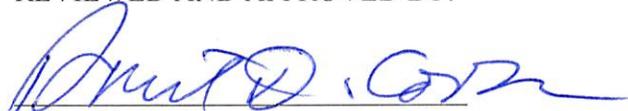
It is this Office’s opinion that a court would likely find the South Carolina Department of Education is authorized to transfer funds allocated to the SCPCSD, as the current sponsor of a charter school, to an independent institution of higher education which subsequently becomes the sponsor of such a school. See S.C. Code Ann. § 59-40-115 (Supp. 2016) (authorizing charter school to seek transfer to a new “sponsor” for the remainder of the duration of its contract); S.C. Code Ann. § 59-40-140(B) (Supp. 2016) (authorizing an IIHE charter school sponsor “to receive and distribute state funds to the charter school”). The State Superintendent administers the State Department of Education and has “general supervision over and management of all public school funds provided by the State and Federal Governments.” S.C. Code Ann. § 59-3-30. The General Assembly mandated that the provisions of the Charter Schools Act of 1996 “be interpreted liberally to support the findings and goals of this chapter and to advance a renewed commitment by the State of South Carolina to the mission, goals, and diversity of public education.” S.C. Code Ann. § 59-40-30(A). To this end, the Department may exercise its authority over funds provided by the General Assembly to the extent it is consistent with the 2017-18 General Appropriations Act (H. 3720) and other law. As discussed above, a court is likely to find that the such a transfer of funds is consistent with the General Assembly’s intent and the express terms of the 2017-18 General Appropriations Act.

Sincerely,



Matthew Houck  
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REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General