



ALAN WILSON
ATTORNEY GENERAL

November 14, 2017

Mr. Tim Hardee
President, SC Technical College System
Executive Director, State Board for Technical and Comprehensive Education
111 Executive Center Drive
Columbia, SC 29210

Dear Mr. Hardee:

Attorney General Alan Wilson has referred your question dated April 11, 2017 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

"I am the Executive Director of the State Board for Technical and Comprehensive Education ("State Board") and the President of the South Carolina Technical College System, which is comprised of South Carolina's sixteen technical colleges and the System Office. The colleges are situated across the state and provide educational services to nearly 250,000 of our fellow citizens each year. I am writing on behalf of the State Board to ask, in short, whether the State Board has the jurisdiction to assume temporary control of the financial operations of a technical college and enact remedial measures where the State Board finds that the college has, or is projected to have, a budget deficit for the current fiscal year, thereby threatening the college's future economic viability. Because the State's technical colleges operate as a System, the financial distress of one technical college impacts all technical colleges.

...

While the jurisdiction of the State Board includes all sixteen technical colleges, the actual authority of the State Board where the future economic viability of an institution is in jeopardy is unclear because each college has a governing and supervisory body of its own, an "Area Commission." The Area Commission's fiscal authority concerning the college's budget and expenditure of funds is subject to approval, supervision, and audit by the State Board. However, the enabling legislation is unclear as to what authority the State Board has to preserve a college's future economic viability when the college, under the governance of its Area Commission, finds itself facing a budget deficit for the current fiscal year.

Accordingly, I ask whether the State Board, under the provisions of S.C. Code § 59-53-10, et seq., has the authority to temporarily assume control and financial operation of a technical college where the State Board determines that the college has or is projected to have a budget deficit within the current fiscal year. The temporary operating control of the State Board would end once the State Board has observed economic viability for at least three consecutive quarters at the college."

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As you mention the State Board for Technical and Comprehensive Education in your question, the District Court has stated that:

The SBTCE [State Board for Technical and Comprehensive Education] is the central administrative office of the South Carolina technical college system. There are four functional divisions within the SBTCE: the Economic Development Division (“EDD”), the Finance Division (“FD”), the Human Resource Management Division (“HRMD”), and the Instruction Division (“ID”).

Moore v. Kerenick, No. C.A. 3:97-1352-19BC, 1999 WL 33603117, at *3 (D.S.C. Jan. 29, 1999), affd., 20 F. App’x 97 (4th Cir. 1999). This Office has previously opined that “State-supported technical colleges are creatures of statute and thus, only possess those powers given to them by the Legislature.” Op. S.C. Att’y Gen., 2011 WL 380161 (S.C.A.G. January 18, 2011). The same would be true of the State Board for Technical and Comprehensive Education in that it is a creature of statute and would only possess those powers granted by the Legislature. See, e.g., Captain's Quarters Motor Inn, Inc. v. S.C. Coastal Council, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991) (“As a creature of statute, a regulatory body is possessed of only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged.”) (citing City of Rock Hill v. South Carolina Department of Health and Environmental Control, 302 S.C. 161, 394 S.E.2d 327 (1990); City of Columbia v. South Carolina Department of Health and Environmental Control, 292 S.C. 199, 355 S.E.2d 536 (1987)).

As you are aware, the South Carolina General Assembly passed Act No. 56 of 2017-2018 on May 9, 2017 and was signed by the Governor on May 19, 2017. It became South Carolina law § 59-53-600 effective on May 19, 2017. It states that:

(A) Notwithstanding any provision of law to the contrary, during the time period beginning May 1, 2017, and ending November 1, 2018, all powers, duties, and obligations vested in the Denmark Technical College Area Commission, as provided in this article, are devolved upon and become the powers, duties, and obligations of the State Board for Technical and Comprehensive Education. The state board shall consult with and receive input from the Denmark Technical College Area Commission. On November 1, 2018, all powers, duties, and obligations vested in the state board pursuant to this section shall revert back to the Denmark Technical College Area Commission.

(B) During the eighteen-month period beginning on May 1, 2017, the state board shall provide quarterly status reports to the Chairman of the Senate Finance Committee and the Chairman of the House Ways and Means Committee concerning its activities in relation to Denmark Technical College, its operations, financial standing, recruitment and retention of students, actions taken to stabilize the college, and any other matters the state board deems relevant.

(C) In addition to other activities undertaken by the state board pursuant to this section, the state board shall study the most effective, efficient delivery of technical college educational opportunities to Allendale, Bamberg, and Barnwell Counties. The committee shall seek the input of stakeholders in the service area, including stakeholders from local governments, school districts, and area businesses and economic development organizations. The committee shall report

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its findings and recommendations no later than February 1, 2018. The report shall be submitted to the state board, the Chairman of the Senate Finance Committee, the Chairman of the House Ways and Means Committee, and the Governor.

S.C. Code Ann. § 59-53-600. It is repealed as of November 1, 2018. Act No. 56, § 2, 2017 S.C. Acts. It is this Office's understanding that you are asking the question of whether the State Board for Technical and Comprehensive Education "has the authority to temporarily assume control and financial operation of a technical college where the State Board determines that the college has or is projected to have a budget deficit within the current fiscal year" in the absence of such a statute.

As you are also aware, the State Board for Technical and Comprehensive Education has jurisdiction over all state-supported technical colleges and schools. S.C. Code Ann. § 59-53-20. The State Board for Technical and Comprehensive Education must "submit to the Commission on Higher Education a budget and enrollment documentation for all existing and proposed college parallel courses or associate degree programs with college transfer credit by institutional location for review and comment prior to submission of the Board's total state budget request to the Governor." S.C. Code Ann. § 59-53-40. Moreover, the Board must "establish a minimum and maximum tuition fee with the approval of the area commissions," in addition to requiring "accountability for and maintain[ing] inventory records over all donated equipment, all real property, and equipment... regardless of [the] source of the funds." S.C. Code Ann. § 59-53-50. "The Board shall establish statewide policies and procedures necessary to insure educational and financial accountability for operation of the technical education institutions and their programs ... [and the] area commissions are delegated primary responsibility for local governance and supervision of the individual institutions in compliance with all state laws by adoption of appropriate local policies and procedures which are consistent with state-level policies and procedures." S.C. Code Ann. § 59-53-51 (emphasis added). Furthermore, the General Assembly funds the Technical Education System by appropriations to the State Board for Technical and Comprehensive Education, and "funds budgeted for the technical institutions must be allocated in a uniform and equitable manner." S.C. Code Ann. § 59-53-57. Likewise, area commissions shall submit a proposed budget to the State Board for Technical and Comprehensive Education for approval and shall spend funds consistent with their budget. S.C. Code Ann. § 59-53-52.

In 1983 this Office opined on the relationship between the State Board for Technical and Comprehensive Education and the area commissions for each technical school. See Op. S.C. Att'y Gen., 1983 WL 181989 (S.C.A.G. September 6, 1983). It stated that:

The relationship between the State Board and the area commissions can, perhaps, best be addressed in terms of spending authority because of the importance of such authority. The area commissions are given certain discretion in the use of their funds. Specifically, they are directed to adopt regulations for ' . . . the expenditure of their funds as they may deem desirable. ...' § 59-53-52(2) [Emphasis added]; see also, § 59-53-52(12). This statute immediately presents the question of what is meant by 'their' funds. Clearly, it would include institutional fees which § 59-53-51 designates as local funds. Because the area commissions receive most of their funds from federal, state and local governmental sources, all of this money was also probably intended to be considered 'their' funds along with the more limited sources of campus operations such as bookstores. See R241 § 130, 1983 (Appropriations Act).

Although it is considered 'their funds', the area commissions' expenditures of their money, regardless of its source, would be limited by the powers given to the State Board for Technical and Comprehensive Education (Board). The State Board is granted authority to approve the budgets for the area commissions under § 59-53-52(16) and has specific authority over some of the objects of area commission expenditures.

...

A very broad power given to the State Board which could affect monetary matters is the authority to '... establish statewide policies and procedures necessary to insure educational and financial accountability for operation of the technical education institutions and their programs.' § 59-53-51. [Emphasis added]. Accountability has been defined as the 'state of being responsible or answerable.' Black's Law Dictionary (5th Ed. 1980). Thus, a reasonable reading of this somewhat vague grant of authority is that the Board may use it to ensure that the expenditures and policies of the area commissions are consistent with properly applicable State Board policies and state or federal law. Because the State Board's responsibility includes the state level development and operation of high quality programs financed in whole or in part by state funds, the accountability powers should extend to the State Board's adoption of policies that assure that the area commissions fulfill their responsibility to maintain those high quality standards at their respective institutions. § 59-53-50(1).

These conclusions do not appear to be affected by the special legislation that has created each of the area commissions for the technical institutions.

...

A reasonable conclusion about spending that can be drawn from all of the above provisions is that, where expenditures of funds by the commissions are not [...] restricted by legitimate, applicable State Board policy, or state or federal law and budgetary approval is obtained, the expenditures may be made at the discretion of the local commissions regardless of the source of the funds.

1983 WL 181989, at *3 (S.C.A.G. Sept. 6, 1983).

Op. S.C. Att'y Gen., 1983 WL 181989 (S.C.A.G. Sept. 6, 1983). This Office also opined on this subject in 1996 and referenced the 1983 opinion in answering the question of what information could be denied by a technical college or area commission to the Executive Director of the State Board for Technical and Comprehensive Education. See Op. S.C. Att'y Gen., 1996 WL 452818 (S.C.A.G. May 31, 1996). It concluded that "the State Board of Technical and Comprehensive Education, the members of the Board, and its Executive Director has broad authority to request of the area commissions whatever information, documents, reports, or the like which will enable the State Board to carry out its mission of jurisdiction and oversight of the local technical colleges and their area commissions in the provision of technical and comprehensive education." Id. The opinion compared the situation to that of a corporation and stated that:

By analogy, I believe that the State Board, its members, and the Executive Director, like the members of a corporation's governing board of directors, must "have all the information in regard to the affairs of the [agency] ... that [they] can obtain in order that [they] may direct its operations intelligently and according to [their] best judgment..." See 18 Am.Jur.2d Corporations §183. As members of the

State Board and its Executive Director, these individuals are public officers and trustees of the public; and as part of that public trust, they must exercise the duties of their office to the best of their ability. 63 Am.Jur.2d Public Officers and Employees §§ 275, 282.

1996 WL 452818, at *4 (S.C.A.G. May 31, 1996).¹

While your question asks whether the State Board for Technical and Comprehensive Education “has the authority to temporarily assume control and financial operation of a technical college where the ... college has or is projected to have a budget deficit within the current fiscal year” we want to emphasize that the State Board has the authority to “establish a minimum and maximum tuition fee with the approval of the area commissions [and a]ny fees charged above or below this established fee schedule shall require the approval of the Board and the appropriate area commissions.” S.C. Code Ann. § 59-53-50(5) (emphasis added). However, what happens when there is a dispute between the State Board and an area commission is answered by another statute, which states that:

The Board shall establish statewide policies and procedures necessary to insure educational and financial accountability for operation of the technical education institutions and their programs.

...

An area commission has the right to appeal to the State Fiscal Accountability Authority any final decision or action of the Board in accordance with the following procedures:

- (1) if differences occur between the state executive director and the local president, the executive director, local president, and state board congressional district member or a designated at-large Board member shall appear before the local area commission to resolve the differences;
- (2) if the differences are not resolved as outlined in item (1) the area commission chairman, local president, and state executive director shall appear before the Board to resolve the differences;
- (3) if the differences are not resolved by the Board all parties, including the chairman of the Board, shall appear before the State Fiscal Accountability Authority to resolve the differences.

S.C. Code Ann. § 59-53-51. Thus, the State Fiscal Accountability Authority must resolve differences between the State Board for Technical and Comprehensive Education and an area commission.

Conclusion:

This Office believes a court will determine that a budget deficit of a technical college could affect the State Board for Technical and Comprehensive Education especially in light of the General Assembly’s funding of the Technical Education System by appropriations to the State Board for Technical and Comprehensive Education “in a uniform and equitable manner” and could violate policies of the State Board that “insure educational and financial accountability for operation of the technical education institutions,” and such budgets may not be approved by the State Board. S.C. Code Ann. § 59-

¹ See, e.g., Op. S.C. Att’y Gen., 1994 WL 377820 (S.C.A.G. June 6, 1994) (discussing Trident Technical College).

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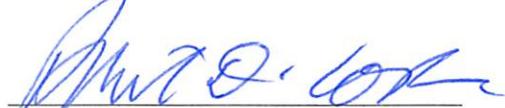
53-57; § 59-53-50; § 59-53-70. Nevertheless, we believe a court will determine that as a creature of statute, the State Board for Technical and Comprehensive Education is limited to those powers expressly granted and appropriately implied to it by the General Assembly, and as, such, must comply with § 59-53-51 in having the State Fiscal Accountability Authority resolve differences with an area commission in the absence of statutory authority to the contrary. See, e.g., S.C. Code Ann. § 59-53-600. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



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Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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