



ALAN WILSON
ATTORNEY GENERAL

January 30, 2018

The Honorable J. Gregory Hembree
Member
South Carolina Senate
P.O. Box 142
Columbia, SC 29202

Dear Senator Hembree:

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 the proposed "Request to Transfer to Another Sponsor Policy" of the South Carolina Public Charter School District (SCPCSD), enumerated as Board Policy III.T.3.F., exceeds the parameters of the Board's authority as defined in S.C. Code § 59-40-55, Sponsor Powers; Retention of Funds and S.C. Code Ann. §§ 220 and 230, establishing and governing the SCPCSD.

Additionally, I would appreciate clarification of whether the Policy usurps the authority granted to the South Carolina Department of Education (SCDOE) in S.C. Code § 59-40-180, which grants the exclusive right to promulgate regulation and develop guidelines to implement the South Carolina Charter School Act to the SCDOE.

By way of background, on July 10, 2017, an Independent Institution of Higher Education (IIHE) registered with the SCDOE as a "Sponsor" of charter schools as defined by S.C. Code § 59-40-40(4). Since that time charter schools have requested a transfer from SCPCSD to IIHE. In response to these transfer requests, the SCPCSD proposed a policy change to their board which contains the following pertinent language and sets a retroactive transfer request date of September 1, 2017:

Upon receipt of the Application for Transfer to Another Sponsor by a school, Staff will review the application and other information available to the District to develop a report for the Board, to include a comprehensive analysis of the school's academic, fiscal, and organizational performance to date as well as an analysis of the "receiving" sponsor's track record of authorizing high

performing schools and executing the responsibilities of quality charter authorizing. The Board also may consider the fiscal and operational impact of the transfer on other schools in the District and, by extension, other District students. The report will include a recommendation from the staff and be provided to the Board, school, and sponsor to which the school seeks to transfer at least one week prior to the public meeting at which the Board will take action on the request.

Law/Analysis

It is this Office's opinion that the proposed "Request to Transfer to Another Sponsor Policy" does not exceed the South Carolina Public Charter School District Board of Trustee's ("SCPCSD") authority. Your letter asks if the development of this proposed transfer policy exceeds the SCPCSD's authority as a "sponsor" under S.C. Code Ann. § 59-40-55, or its authority under §§ 59-40-220, 230. Lastly, the request letter asks whether the SCPCSD's proposed transfer policy usurps the State Board of Education's authority under S.C. Code Ann. § 59-40-180 which states that the Board "shall promulgate regulations and develop guidelines necessary to implement the provisions of this chapter."

In order to address these questions, we must analyze these statutes consistent with the rules of statutory interpretation. 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). As these statutes relate to the same subject matter, namely charter schools, we determine the meaning of these statutes and their effect with reference to each other to "construe them together into one integrated system of law." Op. S.C. Atty. Gen., 2000 WL 1347162 (Aug. 25, 2000); see also State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), reh'g denied (Aug. 5, 2015) ("A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers."). With these principles in mind, we turn to the relevant statutes to determine whether the SCPCSD acted within its statutory authority in developing its proposed transfer policy.

The proposed "Request to Transfer to Another Sponsor Policy" ("transfer policy") document, Board Policy III.T.3.F., cites S.C. Code Ann. § 59-40-115 as the SCPCSD's authority for developing the policy document. Section 59-40-115 reads as follows:

A charter school may terminate its contract with a sponsor before the ten-year term of contract if all parties under contract with the charter school agree to the dissolution. A charter school that terminates its contract with a sponsor directly

may seek application for the length of time remaining on its original contract from another sponsor.

Id. (emphasis added). The plain language of Section 59-40-115 states that “all parties under contract” are required to “agree to the dissolution.” Where the SCPCSD is the sponsor of a charter school, it is a party to that school’s charter school contract. See S.C. Code Ann. § 59-40-40(4) (“‘Sponsor’ means the South Carolina Public Charter School District Board of Trustees . . . from which the charter school applicant requested its charter and which granted approval for the charter school’s existence.”); S.C. Code Ann. § 59-40-40(9) (“‘Charter school contract’ means a fixed term, renewable contract between a charter school and a sponsor that outlines the roles, powers, responsibilities, and performance expectations for each party to the contract.”). Therefore, for a charter school to transfer its charter to another sponsor by terminating its charter school contract prior to the expiration of the ten-year term, the SCPCSD must “agree” to such a termination. The statute’s use of the term “agree” plainly and unambiguously grants the charter school sponsor, in this case the SCPCSD, discretion to either assent to or reject a request to terminate the contract. See AGREE, Black’s Law Dictionary (10th ed. 2014) (“agree vb. (15c) 1. To unite in thought; to concur in opinion or purpose. 2. To exchange promises; to unite in an engagement to do or not do something. 3. Parliamentary law. To adopt (usu. in the phrase agree to).”). Therefore, in the absence of statutory or regulatory authority to the contrary, the SCPCSD may develop criteria by which it will determine whether to agree to the early termination of a charter school contract. See Doe v. S.C. Dep’t of Health & Human Servs., 398 S.C. 62, 80, 727 S.E.2d 605, 614 (2011) (Hearn, J., concurring in part) (“Due to the lack of controlling statutory or regulatory guidance, it was incumbent upon [agency] to set its own criteria . . .”).

This opinion will next examine the statutes identified in the request letter to determine whether a court would find they constitute contrary authority to the SCPCSD developing the proposed transfer policy. In relevant part, S.C. Code Ann. § 59-40-55 lists a sponsor’s powers and duties to include the following:

(B) A charter school sponsor shall:

- (1) approve charter applications that meet the requirements specified in Sections 59-40-50 and 59-40-60;
- (2) decline to approve charter applications according to Section 59-40-70(C);
- (3) negotiate and execute sound charter contracts with each approved charter school;
- (4) monitor, in accordance with charter contract terms, the performance and legal/fiscal compliance of charter schools to include collecting and

analyzing data to support ongoing evaluation according to the charter contract;

(5) conduct or require oversight activities that enable the sponsor to fulfill its responsibilities outlined in this chapter, including conducting appropriate inquiries and investigations, only if those activities are consistent with the intent of this chapter, adhere to the terms of the charter contact, and do not unduly inhibit the autonomy granted to public charter schools;

...

(9) determine whether each charter contract merits renewal, nonrenewal, or revocation;

...

S.C. Code Ann. § 59-40-55 (emphasis added). Subsection (B) lists several duties of charter school sponsors relating to the negotiation, approval, monitoring, and revocation of charter school applications and contracts. Subsection (B)(9) specifically tasks sponsors with determining whether a “charter [school] contract merits renewal, nonrenewal, or revocation.” While this statute does not use the term termination or dissolution, this duty to evaluate how to address a charter school contract’s renewal, nonrenewal, or revocation appears consistent with allowing a sponsor discretion to agree to an earlier termination of such a contract. At the very least, this statute does not appear to conflict with the SCPCSD’s development of a transfer policy.

S.C. Code Ann. § 59-40-220 creates the SCPCSD as a public body while also clarifying that it is considered a “local education agency” which is eligible to receive state and federal funds and grants for charter schools. S.C. Code Ann. § 59-40-230 establishes the SCPCSD Board of Trustees’ powers and duties as follows:

(B) The South Carolina Public Charter School District Board of Trustees has the same powers, rights, and responsibilities with respect to charter schools as other school district boards of trustees of this State including, but not limited to, sponsoring charter schools and applying for federal charter school grants, except that the South Carolina Public Charter School District Board of Trustees may not offer application for a charter school, issue bonds, or levy taxes.

...

(E) The South Carolina Public Charter School District Board of Trustees shall:

(1) exercise general supervision over public charter schools sponsored by the district;

(2) grant charter status to qualifying applicants for public charter schools pursuant to this chapter;

...

(4) keep a record of its proceedings;

(5) adopt rules of governance;

(6) determine the policy of the district and the work undertaken by it;

...

Id. (emphasis added). The listed duties assigned to the SCPCSD clearly authorize the development of the district's proposed transfer policy. In particular, Subsection (E)(6) contains a mandatory directive to the SCPCSD to "determine the policy of the district." As discussed above, Section 59-40-115 requires a sponsor to agree to the early termination of its contract with a charter school before the charter school may transfer the contract to another sponsor for the remaining duration of its term. As a result, Section 59-40-230(E)(6) requires the SCPCSD to "determine the policy of the district" in regards to how it will determine whether to agree to such an early termination.

Finally, the request letter asks whether the SCPCSD's proposed transfer policy usurps the State Board of Education's authority under S.C. Code Ann. § 59-40-180. Section 59-40-180 states that the Board "shall promulgate regulations and develop guidelines necessary to implement the provisions of [the South Carolina Charter Schools Act]." It is this Office's opinion that the proposed transfer policy document does not usurp the State Board of Education's authority to regulate and develop guidelines for the South Carolina Public Charter Schools Act. In fact, the State Board of Education has promulgated regulations under this chapter relating to the procedures and standards for the review of charter school applications. See S.C. Code Ann. Regs. 43-601. However, this regulation does not address the topic of the early termination of a charter school contract or provide on how a charter school sponsor should decide whether or not to agree to such an early termination. Id. As discussed above, when there is a lack of controlling guidance, either statutory or regulatory, it is "incumbent upon [an agency] to set its own criteria." Doe, 398 S.C. at 80, 727 S.E.2d at 614. Therefore, it is this Office's opinion that a court would likely find the proposed transfer policy does not exceed the SCPCSD's authority.

Conclusion

It is this Office's opinion that the proposed "Request to Transfer to Another Sponsor Policy" does not exceed the South Carolina Public Charter School District Board of Trustee's ("SCPCSD") authority. The plain language of S.C. Code Ann. § 59-40-115 states that "all parties under [a charter school] contract" are required to "agree to the dissolution." Therefore, for a charter school to transfer its charter to another sponsor by terminating its charter school

contract prior to the expiration of its ten-year term, the SCPCSD must “agree” to such a termination. The statute’s use of the term “agree” plainly and unambiguously grants the charter school sponsor, in this case the SCPCSD, discretion to either assent to or reject a request to terminate the contract. S.C. Code Ann. § 59-40-55(B)(9) establishes a sponsor’s duty to make a determination regarding a charter school contract’s renewal, nonrenewal, or revocation. A court would likely find this statute provides authority for allowing a sponsor discretion to agree to the earlier termination of such a contract. Moreover, S.C. Code Ann. § 59-40-230(E)(6) requires the SCPCSD to “determine the policy of the district and the work undertaken by it.” As a result, Section 59-40-230(E)(6) requires the SCPCSD to “determine the policy of the district” in regards to how it will determine whether to agree to the early termination of a charter school contract. Finally, it is this Office’s opinion that the SCPCSD’s transfer policy does not conflict with the State Board of Education’s authority under S.C. Code Ann. § 59-40-180 to “promulgate regulations and develop guidelines necessary to implement the provisions [the South Carolina Charter Schools Act].” Because the State Board of Education has not promulgated a regulation establishing criteria by which a charter school sponsor is to evaluate whether to agree to the early termination of a charter school contract, it is “incumbent upon [an agency] to set its own criteria.” Doe v. S.C. Dep’t of Health & Human Servs., 398 S.C. 62, 80, 727 S.E.2d 605, 614 (2011) (Hearn, J., concurring in part).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General