

1975 S.C. Op. Atty. Gen. 161 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4084, 1975 WL 22380

Office of the Attorney General

State of South Carolina

Opinion No. 4084

August 19, 1975

\*1 The Proviso appearing on page 68 of the South Carolina General Appropriations Act for 1975–76 (R321, H2650) requires all schools to operate a breakfast program eligible for federal reimbursement, to insure that all children eligible for a free breakfast receive such breakfast.

TO: Daniel R. McLeod  
Attorney General

QUESTIONS PRESENTED:

1. What is meant by statutory language ‘all County School District Superintendents’?
2. When is a school deemed eligible?
3. a) Must the program be mandatory? b) Who must pay any extra expense which my result?
4. What is the definition of ‘eligible child’?

STATUTES, ETC., INVOLVED:

South Carolina Constitution, as amended, Article 11, Section 3; South Carolina General Appropriations Act, (R321, H2650), page 68; Sutherland Statutory Construction, Volume 2A, Section 45.12, 46.01, 46.06, 47.28, 49.03.

DISCUSSION OF ISSUES:

An opinion has been requested as to the proper interpretation and validity of the following Proviso, appearing on page 68 of the 1975–76 South Carolina General Appropriations Act, (R321, H2650):

‘Provided, Further, That all County School District Superintendents shall mandate that each school principal shall institute a breakfast program within their respective schools when such school is deemed eligible and that the State Department shall assist such schools in the formation of such programs, and shall take the steps necessary to ascertain compliance to provide a free breakfast for all eligible children.’

Four specific questions have been presented.

1. What does ‘all County School District Superintendents’ mean? Applying generally accepted meanings to words used in a statute, the conclusion is reached that all county school district superintendents means those individuals in each district of the county having line authority over school district affairs. If the county superintendent has authority over a county-wide district, he would be included also. See Sutherland Statutory Construction, Volume 2A, Section 47.28.

2. When is a school deemed eligible? The State Department of Education uses the guidelines created by the federal government to determine which schools are eligible to participate. Currently every school is eligible and must be to qualify under the federal reimbursement program. By implication, these State adopted federal standards were intended to be used in the new statute, since no new guidelines for eligibility were promulgated. Also, no other eligibility guidelines exist which could have been intended to be used. See Sutherland Statutory Construction, Volume 2A, Section 49.03.

3. a) Is the current optional nature of participation by a district in the breakfast program removed? The language specifically states that ‘all . . . Superintendents shall mandate . . . a breakfast program . . . when (a) school is deemed eligible . . .’ Since all schools by current definition are eligible, participation becomes mandatory for each school.

\*2 3. b) Who must pay any extra expense which may result? According to State Department of Education personnel, mandatory participation will not result in a loss of federal funding support. Rather, each school will receive the current level of federal reimbursement based on the income levels and size of each student's family. Under this reimbursement schedule federal aid will pay for the meals of those students eligible to receive a free meal and will partially pay for those students eligible to receive a subsidized meal. Student payment will have to be made for the balance of a partially subsidized meal or for a meal for a student not eligible for any federal payment subsidy. Related administrative costs incidental to the breakfast program will have to be the concern of the local school district, since no other source of funds has been provided. Cherokee County currently has the breakfast program in all its schools and might be considered as an example for evaluating procedures and costs incidental to implementing a district-wide program.

4. What is an ‘eligible child?’ The first issue is ‘eligible for what?’ The language of the statute reads ‘to provide a free breakfast for all eligible children.’ Clearly, if the statutory intent was to make the breakfast free for all school children, such direct language would have been used. Therefore, the adjective ‘eligible’ used after ‘free breakfast’ means eligible for a free breakfast. All the words in a statute should be given interpretation and that interpretation should be the most reasonable one possible. Sutherland Statutory Construction Volume 2A, Section 46.06 and 45.12. Again looking to State-adopted federal regulations as to student eligibility for a free breakfast, we find eligibility dependent on student's family size and income. These guidelines are adopted in the instant statute because there are simply no other standards which could have been intended.

#### CONCLUSION:

The apparent legislative intent behind the instant statute was to increase the availability of a federally reimbursed breakfast program for the benefit of all South Carolina school children, especially those at an income level warranting a free meal. Therefore, to accomplish this result all South Carolina school districts must participate in the current breakfast program under current standards. The only real change effected by this statute is to make the current program mandatory instead of optional.

Statutes validly enacted into law are given the presumption of constitutionality. Where a logical interpretation can be given to ambiguous language, making the statute reasonably and constitutionally proper while complying with legislative intent, such interpretation should be adopted. The fact that the legislature may have been unaware of, or was not concerned with, administrative complications created by a statute should not, in and of itself, be grounds for invalidating the statute.

It is my opinion that the instant statute is a valid exercise of broad legislative authority to provide free public education to all children in the State, as granted by Article II, Section 3 of the South Carolina Constitution.

#### CONCLUSION:

\*3 Article XI, Section 3 of the South Carolina Constitution does not mandate totally free public education for every child in the state. Whether or not a fee may be charged a student depends on the nature of the fee and the authority under which it was created.

(See also 1970 Atty. Gen. Op. 31).

George C. Beighley  
Staff Attorney

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