



ALAN WILSON  
ATTORNEY GENERAL

November 8, 2023

Dr. Jerome Singleton  
Commissioner  
S.C. Highschool League  
P.O. Box 211575  
Columbia, SC 29221

Dear Dr. Singleton:

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

As Commissioner of the South Carolina High School League (“League”), I am writing to request an advisory opinion regarding the application of 2023-2024 budget Proviso 1.50, as it relates to the League's authority to address competitive balance between traditional public schools and non-traditional schools, i.e., private school members and public charter school members.

By way of background, the 2023-2024 Annual Appropriations Act contains a budget proviso (Proviso 1.50) for the Department of Education that contains the following provisions, and I have highlighted the language below in question:

1.50. (SDE: Interscholastic Athletic Association Dues)

(A) A public school district supported by state funds shall not use any funds or permit any school within the district to use any funds to join, affiliate with, pay dues or fees to, or in any way financially support any interscholastic athletic association, body, or entity unless the constitution, rules, or policies of the association, body, or entity contain the following:

...

(2) (a) guarantees that private or charter schools are afforded the same rights and privileges that are enjoyed by all other members of the association, body, or entity. A private or charter school may not be expelled from or have its membership unreasonably withheld by the association, body, or entity or restricted in its ability to participate in interscholastic athletics including, but not limited to, state playoffs or championships based solely on its status as a private school or charter school. The association, body, or entity shall set reasonable standards for private or charter school admission. A private or charter school denied membership must be provided, in writing within five business days, the reason or reasons for rejection of its application for membership;

...

Budget Proviso 1.50 (emphasis added).

As you may be aware, there has recently been considerable discussion regarding the success of non-traditional member schools in our smallest classifications. The League and its members have been taking a close look at ways to address competitive balance. As part of those discussions with various stakeholders, including state legislators, one suggestion has been the creation of a separate classification and corresponding state championship for non-traditional member schools who may meet certain criteria.

To date, the League has not made any formal proposals for the creation of a separate classification and/or state championship for non-traditional member schools. However, as part of the discussion of the merits of such a proposal, questions have arisen as to whether a separate classification and/or state championship for non-traditional member schools would violate Budget Proviso 1.50 and more particularly, the sections highlighted above. To be clear, the proposals being discussed would not preclude any member school - traditional or non-traditional - from competing for a state championship sanctioned by the South Carolina High School League. However, the proposal would present a change by potentially grouping schools in a classification based on their status as a non-traditional member school.

Therefore, the League requests clarification as to whether Budget Proviso 1.50 would prevent it from considering proposals to address competitive balance that

would create a separate classification and/or state championship for non-traditional member schools. The League appreciates your guidance on this matter. As our reclassification process will begin on November 15, 2023, we would request a response prior to that date so that we may have some guidance before moving forward.

### Law/Analysis

In order to address your question, this opinion will analyze the proviso according to the principles of statutory construction. When interpreting legislation, the primary goal is to determine the General Assembly's intent. See 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). Further, "[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).

The plain language of Proviso 1.50 does not address classifications. It does, however, explicitly address "rights and privileges," being "expelled," having "membership unreasonably withheld," and being "restricted in its ability to participate in interscholastic athletics including ... state playoffs or championships based solely on its status as a private school or charter school." FY 2023-24 Budget Proviso 1.50(A)(2)(a) (emphasis added). Given the concerns articulated in the proviso, it seems clear the Legislature intended for private schools and charter schools to be able to offer their students meaningful participation in interscholastic athletics.

Although your letter states that the League has not made a formal proposal to create a separate classification or playoff, after discussing the issues raised in your letter, this Office understands the contemplated classification would not alter which schools private schools or charter schools compete against during the regular seasons for the sports in which they participate. Rather, the classification would create an additional playoff division. The League is required to set "reasonable standards" for admission of these non-traditional member schools, but it cannot adopt a classification that would deny them "the same rights and privileges that are enjoyed by all other members." Id. While we do not have a formal proposal to evaluate, a potential concern with a separate playoff system is immediately apparent. The prohibition in Proviso 1.50(A)(2)(a) against restrictions on participation in interscholastic athletics expressly includes "state playoffs or championships." If the proposed classification is solely based on a school's "status as a non-traditional member school," a court may well find it violates the proviso because it is a restriction on the basis of status as a private school or charter school. Id. Again, this Office has not evaluated

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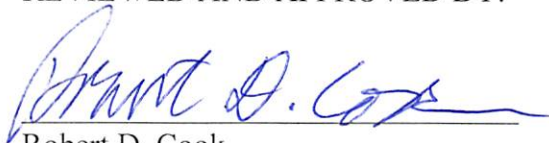
a specific proposal and we could not determine with finality whether it would comply with or violate Budget Proviso 1.50 because that would require findings of fact. See Op. S.C. Att'y Gen., 2006 WL 1207271 (April 4, 2006) (“Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions”).

Sincerely,

A handwritten signature in blue ink, appearing to read "Matthew Houck".

Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook".

Robert D. Cook  
Solicitor General