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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

April 27, 2000

The Honorable J. Todd Rutherford
Member, House of Representatives
Room 432-A Blatt Building
Columbia, SC 29211

Dear Representative Rutherford:

You have requested an informal opinion as to whether a LIFE scholarship may be awarded to a student who is awaiting a conditional discharge for a first offense pursuant to S.C. Code Ann. §44-53-450 (1976). This statute provides, in part, as follows:

(a) Whenever any person. . . pleads guilty to or is found guilty of possession of a controlled substance under § 44-53- 370 (c) and (d), except narcotic drugs classified in Schedule I (b) and (c) and narcotic drugs classified in Schedule II, the court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place him on probation upon terms and conditions as it requires Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime, including the additional penalties imposed for second or subsequent convictions (emphasis added).

Section 59-149-90 (Supp. 1999), a pertinent statute relating to the LIFE scholarship program, provides that "(A) Students must not have been adjudicated delinquent or been convicted or pled guilty or nolo contendere to any felonies or any alcohol or drug related offenses . . . in order to be eligible for a LIFE scholarship . . . [except as provided therein]."

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Although §59-149-90 bars scholarships for students having pleaded guilty to drug related offenses as provided therein, §44-53-450 expressly provides that a Court may proceed with a conditional discharge after a guilty plea "without entering a judgment of guilt". Section 59-149-90 does not indicate any legislative intent to create an exception to the provisions of §44-53-450 withholding judgment.¹ Accordingly, neither the probationary period nor the dismissal under §44-53-450 constitute a conviction or a guilty plea under §59-149-90 given that the Court has not entered judgment under these circumstances and that given that successful completion of the terms and conditions results in a discharge and dismissal which "... is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime" Students would remain eligible for LIFE scholarships while under probation under §44-53-450.

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.

Assistant Deputy Attorney General

¹The "...primary function in interpreting a statute is to ascertain the intention of the legislature." *South Carolina Department of Highways and Public Transportation v. Dickinson*, 288 S.C. 134, 341 S.E. 2d 134 (1986). "Where the terms of a statute are clear and unambiguous, there is no room for interpretation and we must apply them according to their literal meaning." *Id.* When possible, statutes addressing the same subject should be construed so as to give effect to both. *Yahnis Coastal, Inc. v. Stroh Brewery*, 295 S.C. 243, 368 S.E. 2d 64 (1988)