

The State of South Carolina



Office of the Attorney General

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January 12, 1988

The Honorable Charlie G. Williams  
State Superintendent of Education  
South Carolina Department of Education  
Rutledge Building  
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested the advice of this Office as to the applicability of sanctions and waivers to a school district that, in the last school year, failed to meet certain requirements of the Education Improvement Act (EIA). §12-35-1557 of the Code of Laws of South Carolina, 1976 as amended. These requirements set forth below are that school districts, at least, maintain the prior year's local financial effort per pupil for non-capital programs plus an inflation factor:

"...school district boards of trustees or other governing bodies of school districts shall maintain at least the level of financial effort per pupil for non capital programs as in the prior year adjusted for an inflation factor estimated by the Division of Research and Statistical Services. The county auditor shall establish a millage rate so that the level of financial effort per pupil for non capital programs adjusted for an inflation factor estimated by the Division of Research and Statistical Services is maintained as a minimum effort. No school district which has not complied with this section shall receive funds

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hereunder. School district boards of trustees may apply for a waiver to the State Board of Education from the requirements of this section if (1) the district has experienced a loss in revenue because of reduction in assessed valuation of property or has had a significant increase in one hundred thirty-five average daily membership. (2) the district has experienced insignificant growth in revenue collections from the previous year. A school district is eligible for an annual renewal of the waiver provided the district meets one of the above criteria and meets the minimum effort requirement of the previous year and at least the minimum required effort of the Education Finance Act.... §12-35-1557 (emphasis added).

My understanding from your staff is that the school district had adopted a budget for the last school year which was in compliance with these requirements, but the tax millage was cut by the county governing body which resulted in a budget cut. 1/ That failure to satisfy the §12-35-1557 requirements last year was first determined this school year, but the school district is now projected to be in compliance for this year because it has adopted a budget supported by millage that is estimated to be sufficient to meet the requirements. The school district has sought a waiver of sanctions for its failure to meet the requirements last year. The waiver is requested under ground 2, quoted above, which permits waivers when school districts have experienced insignificant growth in revenue collection.

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1/ A previous opinion of this Office concluded that §12-35-1557 provided a controlling means for setting the millage necessary to fund the required local effort under this section as set forth in a school budget. This tax levying authority has been interpreted to provide for the county auditor's determination and application of the millage needed to produce sufficient revenue for the local effort upon the receipt of a school district's budget providing for the required local effort. Ops. Atty. Gen., (August 5, 1986 and May 6, 1986). School districts have the duty to set forth in their budgets the amount of revenue needed to meet §12-35-1557's local effort requirements. Id. and Ops. Atty. Gen., (April 28, 1986).

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The initial question is whether the following fund cut-off provisions from the above quoted part of §12-35-1557 are applicable now to the school district when the district is projected to be in compliance this school year: "no school district which has not complied with this section shall receive funds hereunder." (Emphasis added). Neither this passage nor any other part of section 12-35-1557 expressly addresses the question of whether this penalty provision may be applied only during the year in which a district fails to meet the financial effort requirements or whether it may also be applied in a succeeding fiscal year for prior year failures. With the absence of express direction, guidance is provided by the following rule of statutory construction:

"In the construction of statutes the dominant factor is the intent, not the language of the legislature. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956). A statute must be construed in light of its intended purposes, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute. Id." Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984).

Because the above provision cuts off funds for districts that have "not complied" with §12-35-1557, the legislative purpose must have been to encourage compliance. This purpose of encouraging compliance would not be served by cutting off State funding this school year for the school district that failed to comply last year because the school district is now projected to be in compliance for this year. 2/ Therefore, because cutting off funds now would not serve the Legislature's purpose and because the Legislature is presumed not to pass legislation with an ineffective or absurd result (Sutherland Statutory Construction, Vol. 2A, §45.12; Ops. Atty. Gen. (August 16, 1985)), §12-35-1557 should not be construed so as to authorize a cut-off in State funding for this year for the school district in question when it is estimated to be in compliance at this time. Accordingly, the question of whether the school district is entitled to a waiver under §12-35-1557 need not be reached now because the district is not subject to the fund cut-off provisions as long as it remains in compliance with the local effort requirements this school year; however, the Department of Education may wish to consider seeking legislative clarification as to the

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2/ State funding for the previous school year in which the district was not in compliance has already been distributed.

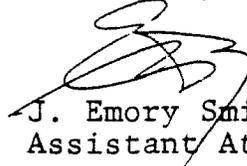
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coordination of the penalty provisions of §12-35-1557 with regular reporting and auditing requirements, and as to the duration and amount of the penalty.

In conclusion, the fund cut-off provisions of §12-35-1557 cannot be applied now to a school district that has adopted a budget and has millage estimated to be sufficient to fund the local effort required under §12-35-1557 for this year although the school district failed to meet the local effort requirement last year. Therefore, the question of the district's entitlement to a waiver need not be reached at this time, but the district is required under §12-35-1557 to maintain the local effort throughout this school year in the absence of a waiver.

If you have any questions, please let me know.

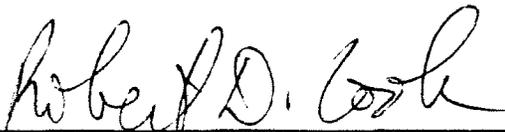
Yours very truly,



J. Emory Smith, Jr.  
Assistant Attorney General

JESjr/srcj

REVIEWED AND APPROVED:



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