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The State of South Carolina



Opinion to 2055

Office of the Attorney General

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April 28, 1986

The Honorable E. Crosby Lewis
Chairman, Education Improvement Act
Select Committee
519-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Lewis:

You have requested the opinion of this office regarding the Education Improvement Act (EIA) provisions concerning the maintenance of local funding of its programs. Act 512, Part II, Section 9, Division V, Section 2, Acts and Joint Resolutions of South Carolina, 1984. Your questions and the responses thereto are set forth after the following quotations of the relevant EIA provision:

"Unless otherwise authorized or provided herein, school district boards of trustees or any other appropriate governing body of a school district shall maintain at least the level of per pupil financial effort established as provided in Fiscal Year 1983-84. Beginning 1985-86 local financial effort for non-capital programs shall be adjusted for an inflation factor estimated by the Division of Research and Statistics.

Thereafter, 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 Statistics.... No school district which has not complied with this section shall receive funds hereunder."
...Division V, Section 2, EIA as amended by Act 201, Part II, Section 61.

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You have initially asked whether any other section of the EIA limits the effect of the above requirements for maintaining the 1983-84 level of per pupil financial effort. The only provision in the EIA which would appear to limit the effect of the above requirements is a 1985 amendment which allows school districts to apply to the State Board of Education for waivers under certain circumstances related to revenue and pupil enrollment (Act 201, Part II, §61, 1985); however, of some effect also may be a 1985 Appropriations Act provision which proportionately reduces the required local funding for the Education Finance Act (EFA) if a reduction is required in the State's contribution. Act 201, Part I, Section 30, 1985; see also §59-20-10 et seq. of the Code. To give effect to both this proviso for the EFA and the above EIA provision, a reasonable construction appears to be that school districts would have to comply with the EIA provision except that, as to EFA funds, the local EFA effort could be reduced proportionately if State EFA funds were reduced. See Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970).

You have also asked whether this "level of [local] per pupil financial effort" refers to an amount in actual dollars or to the percentage of local funds out of the total per pupil financial effort. No express answer to your question is set forth in the EIA. The use of the word "level" provides little guidance because case law and dictionary definitions indicate that the term can refer either to a sum of money or to a percentage (Lundy Electrical Systems, Inc. v. Optical Recognition Systems, 362 F.Supp. 130, 151 (ED Va. 1973); Websters Third New International Dictionary "level"); however, the context in which "level" is used can indicate that term's meaning therein. Lundy. Here, references in the EIA to the adjustment for an inflation factor and references to the "amount" of local effort in the EFA and Appropriations Act indicate that the legislative intent for the "level of ...effort" was a sum of money rather than a percentage. See §59-20-40 (1)(e) and (f), (3) and Act 201, §30, page 1198; Spartanburg Sanitary Sewer District v. City of Spartanburg, 321 S.E.2d 258 (SC 1984); Sutherland Statutory Construction, Vol. 2A §§46.05 (4th Ed.) and 51.02 . 1/ This interpretation has also been given to the law by the Department of

1/ This usage of the term level is consistent with the usage of that term in the EFA. The calculation of EFA contribution is based upon the "base student cost" which is the "funding level" necessary to support EFA programs. See §§59-20-20(6). This level is set by the legislature as a specific sum of money. Id. and Act 201, Part I, Section 30, p. 1198.

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Education which has the responsibility of monitoring and auditing the monies from the EIA fund. Act 512, Part II, §9, Division III (6). Such administrative interpretation is entitled to weight in the construction of a statute. Sutherland, Vol. 2A §49.05 and Vol. 3, §65.05.

You have asked whether the prior year effort adjusted by an inflation factor applies to fiscal year 1984-85 and all subsequent years. Again, no express answer is given by the statute, but guidance is provided by the following provisions: "...[a] school district must maintain at least the level of per pupil financial effort established as provided in Fiscal Year 1983-84"; Beginning 1985-86 local financial effort...shall be adjusted for an inflation factor..."; and "thereafter, ...school districts shall maintain at least the level of financial effort...as in the prior year adjusted for an inflation factor...." (Emphasis added). Reading these provisions together and giving them their ordinary meaning supports an interpretation that the 1984-85 funding was to have been at least as much as that in 1983-84 but that the inflation factor did not have to be utilized until 1985-86 when it would be applied to raise the 1985-86 funding over that of the 1983-84 level. Sutherland, Vol. 2A, §46.05. This interpretation is given to the statute by the Department of Education and is entitled to weight. Sutherland, Vol. 2A, §49.05 and Vol. 3, §65.05. References in the law to adjustments over the prior year indicates that the factor is intended to measure annual inflation. Vol. 2A, §§46.01 and 46.05. The use of the word "thereafter" indicates that these adjustments must continue to be made annually. Id.

You have also asked whether the "financial effort per pupil for non-capital programs" includes teachers salaries. Because salaries are non-capital programs, they should be included in the effort. See §59-20-20 (2)(b); Lewis v. Gaddy.

Your remaining questions relate to the EIA provision now codified as §59-20-50 (4)(b) which is set out, in part, as follows:

"The State minimum salary schedule shall be based on the State minimum salary schedule index in effect as of July 1, 1984. In Fiscal Year 1985, the 1.00 figure in the index will be \$14,172.00...[B]eginning with Fiscal Year 1986, the 1.00 figure in the index shall be adjusted on a schedule to stay at the southeastern average...[U]nder this schedule, school districts will be required to maintain local salary supplements per teacher, no less than their 1983-84 level."

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Under this provision the schedule is funded in accordance with Education Finance Act (EFA) formulas concerning State and local shares of the cost of that program. Sections 59-20-20 (2) (b) and 59-20-50 (4). Your questions concern the local supplements which are additions to this schedule. Sutherland Statutory Construction, Vol. 2A, §§46.01 and 46.05. (See Ops. Atty. Gen. 4/28/86).

Section 59-20-50 requires the local salary supplements to this schedule to be maintained at a "level" no lower than the 1983-84 level, but it does not require increases in the local salary supplement. Although Division V, Section 2, supra, requires inflationary adjustments in the local effort, this provision does not indicate that each aspect of the non-capital programs such as teachers' salaries must be increased by the inflationary amount. Finally, although §59-20-50 (4) (b) does not provide express guidance, construing its provisions with regard to those of §59-20-20(6) and of Division V, Section 2, supra, indicates that the reference to local salary supplements is to dollar amounts rather than percentages. Sutherland, Vol. 2A, Section 46.05; see note 1, supra. Again, these constructions of the provision are supported by the administrative interpretations given to them by the Department of Education. See supra.

Most of the questions that you have asked, as noted, are not expressly answered by the EIA. Nevertheless, the following conclusions appear to be reasonable under ordinary rules of statutory construction:

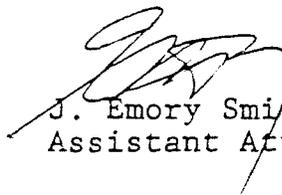
- 1) For 1985-86, the minimum local financial effort for non-capital programs for 1985-86 is equivalent to the 1983-84 effort adjusted by an annual inflation factor. For each year after 1985-86, an inflation factor must be applied to the previous year's effort. No exception appears to exist to these local funding requirements in the absence of a waiver by the State Board of Education or a reduction in State EFA funding in which case a proportionate reduction in local EFA funding may be made.
- 2) The phrase "financial effort per pupil for non-capital programs" includes teachers' salaries. School districts must continue to maintain local teacher salary supplements in subsequent school years at a level no less than their 1983-84 level. Inflationary adjustments in these salary supplements are not required.

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- 3) References to the local financial effort for EIA funding and teachers' salary supplements appear to apply to dollar amounts rather than to percentages of total funding.

If you have any questions or if I may be of other assistance, please let me know.

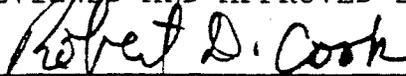
Yours very truly,



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