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January 30, 1986

George L. Schroeder, Director  
Legislative Audit Council  
620 Bankers Trust Tower  
Columbia, South Carolina 29201

Dear Mr. Schroeder:

You have asked the opinion of this Office whether the Legislative Audit Council possesses the authority to conduct an audit of the Horry County School District. In your request, you express reservation concerning the Council's authority to conduct an audit of the District. Our review of the query likewise concludes that it is doubtful that the Council possesses such authority. In the absence of any clear legislative expression providing the authority to audit a local political subdivision, such as a school district, we are unable to suggest that the legislature intended to provide Council with such authority.<sup>1/</sup>

The Council is expressly provided audit authority in § 2-15-60(b), which provides:

It shall be the duty of the Council:

(b) To conduct fiscal investigations and make audits upon requests and when

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<sup>1/</sup> The Horry County School District is a countywide district governed by the Horry County Board of Education; additionally, the Board serves as the ex officio board of trustees for the School District of Horry County. See, § 21-30-51 (S.C. Code of Laws, 1962, as amended), and in particular, Act No. 79 of 1971. Accordingly, any conclusions reached herein are equally applicable to the district or the board.

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authorized by the Council, of the operations of State departments, agencies, and institutions for the purpose of determining the effectiveness of such operations and possible legislative action to bring about improvements therein.

"State agencies" as used therein is broadly defined by the legislature as:

... all officers, departments, boards, commissions, institutions, universities, colleges, bodies politic and corporate of the State and any other person or any other administrative unit of State government or corporate outgrowth thereof, expending or encumbering State funds by virtue of an appropriation from the General Assembly, or handling money on behalf of the State, or holding any trust funds from any source derived, but shall not mean or include counties.

Section 2-15-50. "Audit" as used in § 2-15-60(b) is specifically defined in § 2-15-61 (§ 16, Part II, Act 201 of 1985) and our response is limited to the Council's authority to conduct an audit as therein defined.

The primary consideration in construing a statute is the intention of the Legislature, and thus, in our analysis of §§ 2-15-50 and 2-15-60(b) we seek to ascertain and follow this intent if it can be reasonably discovered. Gambrell v. Travelers Insurance Co., 280 S.C. 69, 310 S.E.2d 814 (1983). Since there exists no preamble or significant legislative history to assist in determining the Legislature's purposes in enacting these provisions, to discover intent we must first turn to the language employed by the General Assembly. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Of course, the words used in the statute should be given their plain and ordinary significance, without resort to a forced construction for the purpose of expanding the statute's operation. Walton v. Walton, *id.* Where, as here, we believe the words in the statutes create ambiguity, we additionally search for the appropriate administrative interpretation and application of the statutes. Marchant v. Hamilton, 279 S.C. 247, 309 S.E.2d 781 (S.C.App. 1983).

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As noted, Council is authorized pursuant to § 2-15-60(b) to conduct audits of state departments, agencies and institutions. Section 2-15-50 further defines "State agencies", and our focus involves whether State agencies as used therein includes countywide School Districts. Significantly, the General Assembly limited those governmental entities subject to audit by the Council to those that may be defined as being "of the State". Additionally, an agency subject to audit must either expend, encumber or handle state funds. § 2-15-50. The General Assembly clearly intended to cast a broad net and include state agencies, departments, divisions, institutions, units, bodies politic and corporate, and corporations of most every form, provided they are "of the State"; nonetheless, it is difficult to read § 2-15-50 as including within its scope local entities, such as school districts, since the statute's emphasis is upon state governmental units, and there exists no reference in its list of inclusions to local governmental units.

We realize that the term "state" as used in § 2-15-50 is ambiguous. In other contexts it has been construed both to include local political subdivisions such as school districts, and to exclude such districts. For example, the term state has been said to refer in its general sense to those agencies and officials whose duties are coextensive with that of the state as distinguished from those whose jurisdictions are limited to municipalities, counties and school districts. 72 Am.Jur.2d, States, § 62. Moreover, in a strict sense, state officials are those whose duties concern the "state at large" as opposed to those whose responsibilities are limited to any political subdivision thereof. 81A CJS, States, § 80.

Several cases in other jurisdictions have concluded that statutes that focus upon the state, are its agencies, departments, divisions or institutions, etc. ordinarily do not include school districts. In Bowie v. Coloma School Board, 227 N.W.2d 198 (Mich. 1975), the Court construed a statute that defined state projects to include those involving "any officer, board, commission of the state or state institutions supported in whole or in part by state funds..." as not including school districts, primarily because of the omission of any reference to political subdivisions. Id. at 300. Similarly, it has often been held by various courts that school districts are not primarily agencies of the State, but are local entities and bodies politic and corporate. See, Hatcher v. State of

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Texas, 81 S.W.2d 499 (1935); Muse v. Prescott School District, 349 S.W.2d 329 (Ark. 1961); Wilson v. Thompson, 348 S.W.2d 244 (Tex. 1961). In South Carolina, the single identified decision relating to whether a local subdivision is included within a general statutory definition of a state agency concluded that a municipal Housing Authority was not a state agency as defined by the legislature at § 1-23-310(1). Housing Authority of Charleston v. Olasov, 282 S.C. 597, 320 S.E.2d 475 (S.C.App. 1984).

While we have located no South Carolina decisions that have determined whether a school district constitutes a state entity, as that term is ordinarily understood, the nature and character of school districts as local political subdivisions is undisputed. Stackhouse v. Floyd, 248 S.C. 183, 149 S.E.2d 437 (1966); Holland v. Kilgo, 253 S.C. 1, 168 S.E.2d 569 (1969). Moreover, pursuant to the greater weight of authority, school districts are generally recognized as political subdivisions, local in nature, and possessing a fixed territorial boundary and constituency. 78 CJS, Schools and School Districts, § 23; see also, Dayton Board of Education v. Brinkman, 433 U.S. 406, remand, 561 F.2d 852, remand, 446 F.Supp. 1323, reversed, 583 F.2d 243, affirmed, 443 U.S. 526. Since school districts are political subdivisions, they by law possess significant governmental autonomy and generally operate independently of any superior governmental authority in the conduct of their day to day operations. Because it is our belief that the emphasis in § 2-15-50 is with governmental entities whose responsibilities concern the state at large, and not those semi-autonomous entities that are essentially local in jurisdiction, we cannot identify, at least from the express terms of the statute, any intent to include school districts within the audit authority of Council.

There exists an additional consideration, intrinsic to the statute, that suggests the General Assembly may have not intended that school districts be included as state agencies subject to audit by the Council. Importantly, there is no reference within § 2-15-50 in its precise listing of inclusions to political subdivisions, and in particular to school districts. While the General Assembly took care to enumerate several state governmental units that were to be included, it did not mention political subdivisions, although the legislature was well aware that school districts are local political subdivisions and, in addition, fully knew the pervasiveness of local subdivisions in the provision of governmental services in South Carolina. This critical omission should not be dismissed as mere oversight especially since the legislature on many occasions has expressly

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included or excluded political subdivisions (and even school districts) in various statutory definitions and provisions; 2/ but must be presumed to be indicative of a specific Legislative intent to exclude subdivisions from the definition. Jones v. H.D. & J.K. Crosswell, 60 F.2d 827 (C.A.S.C. 1932); 2A SUTHERLAND, STATUTORY CONSTRUCTION, § 47.23 (4th ed. 1984).

Because, as we have earlier noted, § 2-15-50 creates ambiguity, not only do we explore the language of the statutes to discern intent, we also seek assistance by reviewing administrative interpretations by the Council, since Council is the single agency charged with the administration of the provision and is most familiar with its operation in fact. The Council's staff has advised that § 2-15-50 has previously been construed by it in a consistent manner as not including school districts.<sup>3/</sup> As previously identified, we believe such conclusion to be reasonably consistent with the language of the provision, and thus we are constrained to defer to the Council's administrative interpretation as a meaningful guide to the statute's intent, particularly since Council has operated in accordance with its interpretation for several years. Marchant v. Hamilton, 279 S.C. 497, 309 S.E.2d 78 (S.C.App. 1983). We note that we may disagree somewhat with the analysis of the statute as expressed by the Council's staff; nonetheless, we cannot conclude that Council's conclusion that the statute is inapplicable to school districts is contrary to the language of the statute. <sup>4/</sup>

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<sup>2/</sup> See, e.g., § 11-35-310(18) ["... all local political subdivisions such as ... school districts" are excluded]; § 9-1-10(5), the provision expressly includes political subdivisions and school districts in its listing of governmental agencies; § 1-7-50 ["any officer or employer of the State, or of any political subdivision thereof... "].

<sup>3/</sup> See, letter of January 20, 1986, from Mary Spencer, Legal Counsel, to Edwin E. Evans, Deputy Attorney General.

<sup>4/</sup> The Audit Council has construed the exception for "counties" within § 2-15-50, as removing its authority over local agencies. This reasoning is supported by prior opinions of this Office relative to the status of county boards of education and their members. 1961 Op. Atty. Gen. No. 1157; 1970 Op. Atty. Gen., No. 36. These opinions have recognized the essentially county nature of the office of the county board of education.

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We emphatically caution that while we believe a reading of § 2-15-50 as not inclusive of school districts is not unwarranted from the language of the statute, any conclusion drawn in that regard is less than certain. Unquestionably, the word "state" is ambiguous and is capable of various meanings which would include school districts. See, e.g., 40 WORDS AND PHRASES, "State Agency", p. 29. Further, the General Assembly expressly excluded "counties" from its definition of state agencies subject to audit, thus at least providing some indication that other local entities are to be included. We do not believe, however, that the exclusion of counties alters the legislature's major emphasis upon "state" agencies, or the ordinary definition of such term, instead, it appears to be but an attempt by the General Assembly to guarantee that counties would not be deemed state agencies. Cf., 1979 Op. Atty. Gen. 111. 64 (4/30/79)

Moreover, school districts, including that of Horry County, receive millions of dollars of state appropriated funds and thus it would be most reasonable for the General Assembly to subject such districts to audit by Council to insure proper and efficient use of these funds. Incidentally, the General Assembly has recognized the need for oversight in this area and has provided by other legislation, auditing requirements of school districts concomitant with state educational financing programs. See, e.g., § 59-20-60(2) and (6) (Educational Finance Act of 1977). There are policy reasons as well why the General Assembly may not wish to extend Council's auditing authority beyond its traditional scope and usage. There exists hundreds of local political subdivisions, including school districts, and Council's staff is limited and is presently occupied with auditing statewide agencies, departments and commissions. In addition, school districts are primarily local in nature and are responsive to their localized constituency. We of course, do not offer comment upon the policy options, but simply suggest that since the present provisions, §§ 2-15-50 and 2-15-60(b) do not clearly contemplate the inclusion of local school districts within the audit authority of the Council, if it is the intent of the General Assembly to provide such authority to the Council, the General Assembly should amend the identified statutes to expressly include such authority. Such is clearly a matter within the ultimate authority of the General Assembly. See, Article XI of the South Carolina Constitution.

We conclude that absent express authority to audit political subdivisions and in view of the Council's

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traditional operation and recognition that its audit authority does not extend to local school districts, it is doubtful that the legislature intended that such authority be inferred.

Very truly yours,

*Edwin E. Evans*

Edwin E. Evans  
Deputy Attorney General

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REVIEWED AND APPROVED BY:

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