

1983 WL 181989 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 6, 1983

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

Dear Mr. Schroeder:

You have requested that this office advise you as to the authority of and relationship between the State Board for Technical and Comprehensive Education (State Board) and the area commissions for the technical education centers (area commissions). General legislative provisions for the State Board and the area commissions (§§ 59-53-10 *et seq.* of the Code of Laws of South Carolina (1976), as amended) and special legislation establishing each of the commissions do not clearly define all points where state level control ends and local control begins.

Section 59-53-20 gives the Board jurisdiction over all state supported technical institutions and their programs and specifies that all courses, programs and institutions within its jurisdiction be identified and administered as the South Carolina technical educational system. 'Jurisdiction means the right to say and power to act and, as between agencies of government, jurisdiction is the power of that particular agency to administer and enforce the law.' Carroll Vocational Institute v. United States, 211 F.2d 539, 540 (5th Cir. 1954); General Trades School v. United States, 212 F.2d 656 (8th Cir. 1954). Applying this definition to the use of 'jurisdiction' in § 59-53-20 demonstrates that the Board has powers of administration and enforcement over the technical education system. This conjunction with the by the use of the word 'control' in conjunction with the jurisdiction (§ 59-53-20) and the grant to the Board of the authority set forth in §§ 59-53-20, 59-53-50 and 59-53-51.

Although the area commissions for the technical education institutions are given powers of local governance for the institutions (see §§ 59-53-51, 59-53-52 and Note 1, *infra*), the above discussion demonstrates that their powers cannot be exercised in violation of appropriate State Board policy. Moreover, § 59-53-51 requires that local policies and procedures be consistent with state-level policies and procedures. Similar requirements are specifically applied to employment situations. Although § 59-53-52(9) gives the commissions the power to employ personnel, § 59-53-20 designates those personnel state employees and makes them subject to the rules and policies of the State Board, the Budget and Control Board and the State Personnel System.

The relationship between the State Board and the area commissions can, perhaps, best be addressed in terms of spending authority because of the importance of such authority. The area commissions are given certain discretion in the use of their funds. Specifically, they are directed to adopt regulations for '... the expenditure of their funds as they may deem desirable ...' § 59-53-52(2) [Emphasis added]; see also, § 59-53-52(12). This statute immediately presents the question of what is meant by 'their' funds. Clearly, it would include institutional fees which § 59-53-51 designates as local funds. Because the area commissions receive most of their funds from federal, state and local governmental sources, all of this money was also probably intended to be considered 'their' funds along with the more limited sources of campus operations such as bookstores. See R241 § 130, 1983 (Appropriations Act).

*2 Although it is considered 'their funds', the area commissions' expenditures of their money, regardless of its source, would be limited by the powers given to the State Board for Technical and Comprehensive Education (Board). The State Board is granted authority to approve the budgets for the area commissions under § 59-53-52(16) and has specific authority over some of the objects of area commission expenditures. For example, the Board must approve the modification of existing facilities

or the building of new ones at the area institutions. § 59-53-50(7). Thus, the area commissions could not spend money from any source on such matters without Board approval. Another example of the Board's authority to affect spending is its ' . . . approval and disapproval authority over all post-secondary vocational, technical and occupational diploma and associate degree programs financed in whole or in part by the State that lead directly to employment.' § 59-53-20; see, § 59-53-50.

A very broad power given to the State Board which could affect monetary matters is the authority to ' . . . establish statewide policies and procedures necessary to insure educational and financial accountability for operation of the technical education institutions and their programs.' § 59-53-51. [Emphasis added]. Accountability has been defined as the 'state of being responsible or answerable.' Black's Law Dictionary (5th Ed. 1980). Thus, a reasonable reading of this somewhat vague grant of authority is that the Board may use it to ensure that the expenditures and policies of the area commissions are consistent with properly applicable State Board policies and state or federal law. Because the State Board's responsibility includes the state level development and operation of high quality programs financed in whole or in part by state funds, the accountability powers should extend to the State Board's adoption of policies that assure that the area commissions fulfill their responsibility to maintain those high quality standards at their respective institutions. § 59-53-50(1).

These conclusions do not appear to be affected by the special legislation that has created each of the area commissions for the technical institutions.¹ Some of the legislation varies with particular schools, and some of it contains references to the area commissions' being local agencies or administrative agencies of counties.² Nevertheless, the substance of these commission laws does not appear to alter the above description of the relationship between the State Board and the area commissions. Further support for the general uniformity of these relationships within the technical college system is provided by § 59-53-52 which states, in part, as follows: 'except as otherwise provided herein, area commissions of the technical institutions existing on June 17, 1976, shall continue as presently constituted and as provided for by the legislation establishing the respective commissions.' [Emphasis added.] This emphasized language indicates that the general laws for technical education should be controlling in cases of conflicts with pre-existing local legislation. Sutherland Statutory Construction Vol. 2A § 51.05 (4th Ed.).

*3 Of course, to examine the special legislation for all possible conflicts with the general law would be a task that is beyond the scope of this opinion; however, in a general review of the legislation, the only provision noted that might affect the above conclusions about State Board and area commission relationships is a recent law for Trident TEC. Act 70 of 1983. It provides for a levy of millage in Charleston County for Trident and states that '[t]he Area Commission for [Trident] has sole authority to expend the funds collected.' At a glance, this legislation appears to conflict directly with the above conclusions about area commissions generally; however, ' . . . if possible by reasonable construction [statutes addressing the same subject] are to be so construed that effect is given to every provision in all of them.' Sutherland, Vol. 2A § 51.02. Here, the 1983 Act makes clear that the State Board may not arbitrarily direct Trident as to how it should spend its Charleston money; however, this Act expresses no intent to override the State Board's express authority over programmatic and other policy matters. Thus, the State Board appears to retain its authority over programs and policy even though exercising its power in this area might affect the manner in which Trident spends its Charleston tax money.

A reasonable conclusion about spending that can be drawn from all of the above provisions is that, where expenditures of funds by the commissions are not restricted by legitimate, applicable State Board policy, or state or federal law and budgetary approval is obtained, the expenditures may be made at the discretion of the local commissions regardless of the source of the funds.

Of course, area commissions do not lack a voice in State Board policies. Section 59-53-51 requires the participation and input of the area commissions in the formulation of statewide policies and procedures through various means as set forth in that statute. Appeals to the Budget and Control Board are also permitted from 'any final decision or action' of the State Board. § 59-53-51.

For your reference, I note that previous opinions of this office have also addressed questions related to those considered here.³ If we may be of further assistance, please do not hesitate to contact us.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

- 1 Anderson—Oconee—Pickens—§ 59-53-210, et seq.; Berkeley—Charleston—Dorchester (Trident), § 59-53-410 et seq.; Chesterfield—Marlboro, § 59-53-510, et seq.; Florence—Darlington, § 59-53-710 et seq.; Horry—Georgetown, § 59-53-810, et seq.; Orangeburg—Calhoun, § 59-53-1010, et seq.; Piedmont, § 59-53-1210, et seq.; Sumter, § 59-53-1410, et seq.; Richland—Lexington, § 59-53-1610, et seq.; Aiken, Acts 926 of 1962 and 698 of 1978; Denmark, Act 135 of 1983; Greenville, Acts 743 of 1962, 194 of 1967 and 1141 of 1968; Spartanburg, Acts 906 of 1962, 437 of 1969 and 197 of 1973; Williamsburg, Acts 58 of 1969, 380 of 1977 and 632 of 1980, York, Acts 101 of 1963, 809 Part II of 1969 and 1097 of 1970. We have been advised that Beaufort Technical College is governed directly by the State Board. But see Act 283 of 1977 (advisory body).
- 2 See e.g. Act 1141 of 1968 (Greenville); Act 698 of 1978 (Aiken) and § 57-53-410 (Trident). See also R241 of 1983 (Appropriations Act).
- 3 Ops. Atty. Gen. (March 22, 1982, by Frank K. Sloan, Chief Deputy Attorney General); July 25, 1975, by Hardwick Stuart, Jr., former Assistant Attorney General; January 16, 1974, by Timothy G. Quinn, former Senior Assistant Attorney General; April 8, 1970, by Daniel R. McLeod, former Attorney General. The 1970, 1974 and 1975 letters were written before the 1976 changes in the general legislation for the Tennial Education System.

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