ALAN WILSON
ATTORNEY GENERAL

March 9, 2023

The Honorable Stephen L. Goldfinch, Jr.
Member
South Carolina Senate
Post Office Box 823
Murrells Inlet, South Carolina 29576

Dear Senator Goldfinch:

We received your request for an opinion of this Office concerning a plan for two Charleston constituent school districts to build a joint middle/high school. In your letter, you state:

> [T]he Charleston County School District is in the process of purchasing land within St. James-Santee Constituent School District No. 1 and is planning to build a joint middle/high school there. This school is to be shared by St. James-Santee District No. 1 and Moultrie District No. 2. The two districts already share a joint high school within Moultrie District No. 2, Wando High School.

With this information in mind, you ask:

> Which district's board of trustees has authority over drawing attendance lines, approving/denying student transfer requests, and presiding over student discipline/expulsion hearings for the joint school? Should provisions set forth in SECTION 59-39-20 be applied and a high school board of trustees be created for any existing and/or future joint schools between the two constituent school districts?

Law/Analysis

The creation of constituent districts is unique to Charleston County School District ("CCSD"). We explained their formation in a 2015 opinion:

> By Act No. 340 of 1967 the Legislature consolidated the eight school districts of Charleston County into the Charleston County School District ("CCSD") and abolished the Charleston County Board of Education. Act No. 340 § 1, 1967 S.C. Acts 470 ("the Act" or "Act 340"). Upon consolidation, the areas of the respective eight school districts were kept as "special districts" for certain

> administrative purposes as set forth in the Act; the Act termed these "special districts" as "constituent districts." Act 340 called for the boards of trustees of the former eight school districts to continue to serve as the boards of trustees for their constituent district and to "perform the functions delegated to and devolved upon trustees in the constituent districts in this act." Id. (emphasis added). The Act specifies that the powers enumerated to the constituent district trustees are "subject to the appeal to the Board of Trustees of the Charleston County School District." Id. at § 7. 474.

Op. Att'y Gen., 2015 WL 1266150 (S.C.A.G. Mar. 6, 2015).

Act 340 gives trustees for the constituent districts certain powers "in their respective districts, subject to the appeal to the Board of Trustees of the Charleston County School District . . . ." 1967 S.C. Acts 340 § 7. These powers included the power to "transfer any pupil from one school to another within the same constituent district . . . , and determine the school within such constituent district in which any pupil shall enroll . . . ." Id. Act 340 also gives constituent districts the power to suspend and dismiss students within the constituent district. Id. Therefore, Act 340 gives constituent districts authority to determine attendance and discipline within their own districts.

Act 340 does not give authority to constituent districts to make decisions regarding admissions and discipline outside of their district. In addition, Act 340 does not address situations in which a school is shared by more than one constituent district. In Stewart v. Charleston County School District, 386 S.C. 373, 379, 688 S.E.2d 579, 582 (Ct. App. 2009), the Court of Appeals addressed a similar question of who has authority to set the admissions criteria for a county-wide magnet school located in a particular constituent district. The constituent district where the school was located argued under Act 340 it had the authority to determine attendance based on its authority to set attendance guidelines within its borders. Id. The Court disagreed. Id.

> We interpret this language to mean a constituent district may determine what school within that district a student who resides in the district will attend. Because Buist Academy's attendance zone is county-wide, the authority given to a constituent district under section 7(1) is not really implicated in this case as it does not involve the constituent district making an assignment to a traditional neighborhood school.

Id. at 379, 688 S.E.2d at 582. The Court further explained:

> [T]he constituent districts only have the powers bestowed upon them by the Act in Sections 6 and 7. See Act No. 340, § 5, 1967 S.C. Acts 470 ("In addition to the duties, powers and responsibilities now provided by law for county boards of education, and for school district trustees other than those devolved upon the constituent trustees in Sections 6 and 7 of this act, the Board of the Charleston County School District shall . . . ."). Those powers granted to the constituent

> districts are subject to appeal to the CCSD. See Act No. 340, § 7, 1967 S.C. Acts 470 ("The trustees in each of the constituent districts shall have the power in their respective districts, subject to the appeal to the Board of Trustees of the Charleston County School District . . . ."). Therefore, because section 7(1) does not empower the District 20 Board to set attendance guidelines at Buist Academy, that authority is vested in the CCSD.

Id. at 379-80, 688 S.E.2d at 582.

The school you refer to will serve only two constituent districts as opposed to the entire county. However, we believe the holding in Stewart controls in this situation because the school's attendance zone will encompass more than one constituent district and therefore does not involve governance of a traditional neighborhood school. Like the Court in Stewart explained, the constituent districts only have such authority afforded to them under Act 340. Act 340 only gives a constituent district authority over attendance for schools serving the students in that district. As such, Act 340 does not empower one constituent or two constituent districts, as the case may be, to make these determinations when they share a school. This Office must defer to the Court's ruling in Stewart as the controlling law here and therefore, we find authority to govern schools whose attendance zones encompass more than one constituent district rests with the CCSD.

In your request, you mentioned the possible application of section 59-39-20 of the South Carolina Code (2020), which provides:

> Except as otherwise expressly provided, if a single school district establish a high school, the board of trustees of such district shall be the high school board of trustees; and if any two or more districts establish a high school, the board of trustees of the district wherein the high school is located, together with the chairman of each of the cooperating districts, shall constitute the high school board of trustees. And except as otherwise expressly provided, if three or more adjoining school districts, none of which contains an incorporated town of twenty-five hundred inhabitants according to the last preceding census, shall cooperate to establish a centralized high school, the chairmen of the several cooperating districts shall constitute the board of trustees for the centralized high school.

We do not believe a constituent district is a "school district" for purposes of this statute. Section 59-1-160 of the South Carolina Code (2020) defines "school district" for purposes of the South Carolina School Code as "any area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and the area of which constitutes a complete tax unit." In a 2015 opinion, this Office determined constituent districts "lack all of the characteristics of a school district and fall outside of the definition of 'school district,' as provided by S.C. Code Ann. § 59-1-160 (2004)." Op. Att'y Gen., 2015 WL 1266150 (S.C.A.G. Mar. 6, 2015). However, we recognized they may be treated as a

school district "in certain capacities consistent with the powers provided to them by the Act." Id. We further explained:

> [I]t is our opinion that the eight constituent districts lack the complete makeup of an autonomous school district and therefore they do not meet all components of the definition of a school district as defined by S.C. Code Ann. § 59-1-160. Put differently, it is our opinion that this definition describes an autonomous school district, which the constituent districts of Charleston County are not. However, the District Court's holding in United States v. Charleston County Sch. Dist., as affirmed in part by the Fourth Circuit Court of Appeals, indicates that each of the eight Constituent Districts have certain powers unique to school districts, notably local powers related to student assignment and discipline. In turn, this has led to their treatment as school districts in so far as their powers afford by Act 340.

Id.

While a court could find that constituent districts' power over attendance and discipline allow them to be treated as school districts for purpose of section 59-39-60, we believe it is more likely that a court would follow our analysis above and determine the function of determining attendance and discipline for a school serving more than one constituent district rests with CCSD. When interpreting a statute, our courts must "ascertain and effectuate the legislative intent whenever possible." City of Camden v. Brassell, 326 S.C. 556, 560, 486 S.E.2d 492, 494 (Ct. App. 1997). "The legislature's intent should be ascertained primarily from the plain language of the statute. The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose." Jones v. State Farm Mut. Auto. Ins. Co., 364 S.C. 222, 230, 612 S.E.2d 719, 723 (Ct. App. 2005) (citations omitted). In reading section 59-39-60, we glean the intent of the statute was to address school governance when two independent school districts come together to establish a shared high school. Without this statute, school districts would have no guidance as to how the high school should be governed. In regard to high schools established by two constituent districts, there is an overarching school district, the CCSD, whose purpose is to address school governance, except in cases in which the Legislature gave specific authority to the constituent districts. Therefore, the application of section 59-39-60 becomes unnecessary because according to Stewart, such authority rests with the CCSD. As such, we do not believe our courts would treat constituent school districts as a "school district" for purposes of section 59-39-60.

Conclusion

Given that constituent districts only have the powers given to them by the Legislature and that we must defer to the Court's ruling in Stewart as controlling law here, we believe the authority to draw attendance lines, approve or deny student transfer requests, and preside over disciplinary matters for a high school shared by two constituent districts rest with the CCSD. Moreover, we do not believe section 59-39-60 of the South Carolina Code applies to constituent districts because a court

would likely find the Legislature did not intend for constituent districts to be considered "school districts" for purposes of this statute.

Sincerely,

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General