



ALAN WILSON  
ATTORNEY GENERAL

May 31, 2022

The Hon. Stewart Jones  
South Carolina House of Representatives  
420A Blatt Building  
Columbia, SC 29201

Dear Representative Jones:

Thank you for reaching out to the South Carolina Attorney General's Office with your request for an opinion on several questions related to surety bonds on behalf of a constituent. This opinion will set out each of the questions and answer them in turn.

Before turning to these questions, however, we note that these questions directly deal with very specific statutes in Title 59, relating to education, and Title 8, relating to public officers and employees. The questions also implicitly touch on insurance law, which is governed primarily by statutes found in Title 38 and generally administered by the Department of Insurance. *See, e.g.*, S.C. Code Ann. § 38-3-110 (setting out the duties of the Director of the Department of Insurance); *see also* S.C. Code Ann. § 38-15-10 *et seq.* (governing surety bonds). This opinion cannot undertake a comprehensive survey of insurance law, and you have not asked us to do so. Instead, our focus here is on aiding you and your constituent in understanding how the statutes specifically referenced in the request letter – some of which contain archaic language – are intended to operate.

Furthermore, it appears that there are no reported South Carolina appellate court cases directly on point with many of the questions presented. Accordingly, we believe that a court faced with these questions would rely upon the rules of statutory construction to give effect to the intention of the Legislature in codifying the various statutes set out here. As this Office has previously opined:

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). All rules of statutory interpretation are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct. App. 1999).

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*Op. S.C. Att'y Gen.*, 2005 WL 1983358 (July 14, 2005). In the words of the South Carolina Supreme Court,

Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute. Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.

*Hodges v. Rainey*, 341 S.C.79, 85, 533 S.E.2d 578, 581 (2000) (internal citations and quotations omitted). The South Carolina Supreme Court also has held that:

However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect.

*State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (quoting *Stackhouse v. County Board*, 86 S.C. 419, 68 S.E. 561 (1910).).

We turn now to your questions and address each of them in turn.

### Question 1

Your constituent asks:

*[S.C. Code Ann. §] 59-19-160 addressing bond as a prerequisite to receipt of ANY elected position states each board of trustee in a local school district must have a bond, and must record such bond with the corresponding county in the clerk of court office. To confirm in an abstract question of the law, can you confirm this statute stating "trustees" applied to EACH board member ELECTED to a local school board member. Under this statute or other state law, who is responsible for confirming such bond exists, and if not, who is responsible for determining that this bond has been successfully received and recorded?*

Section 59-19-160 reads in full:

The trustees of any school district of this State may take and hold in trust for their particular school district any property granted, devised, given or bequeathed to such school district and apply the same in the interest of the schools of their district in such manner as in their judgment seems most conducive to the welfare of the schools when not otherwise directed by the terms of the grant, devise, gift or bequest. Before such trustees shall assume control of any grant, devise, gift or bequest, they shall give a bond, to be approved by the county board of education of the county in which such grant, devise, gift or bequest is made, conditioned for the faithful discharge of the trust reposed in them in respect to such property, which bond shall be deposited with the clerk of the court of the county.

S.C. Code Ann. § 59-19-160 (2020) (emphasis added).

In South Carolina, school board trustees may be elected or appointed. S.C. Code Ann. § 59-19-30 & 40 (2020). However, section 59-19-160 does not distinguish between elected or appointed trustees, and therefore a court most likely would hold that the plain language of the statute applies with equal force regardless of how trustees are selected. *See* S.C. Code Ann. § 59-19-160.

This statute is directed at the "trustees of any school district of this State." *Id.* Under South Carolina law, "[e]ach school district shall be under the management and control of the board of trustees." S.C. Code Ann. § 59-19-10 (2020). Control of school property is a basic function of the school board trustees. *Id.*; *see also Op. S.C. Att'y Gen.*, 2017 WL 6403325 (November 30, 2017) (opining that public school land is deemed to be "owned and possessed" by the respective school district trustees for purposes of South Carolina trespass law). It logically follows that as a practical matter, a school trustee generally would be required to be covered by an appropriate bond to perform this function.

Turning to the text of Section 59-19-160, we observe that every reference to the trustees is a plural reference and appears to reference the board acting collectively. For instance, the statute begins: "[t]he trustees of any school district . . . may take and hold in trust for their particular school district any property granted . . . to such school district." *Id.* (emphasis added). Furthermore, the bond mandate appears to fall upon the board as a collective duty, while the bond to be given is singular: "Before such trustees shall assume control of any grant, devise, gift or bequest, they shall give a bond . . ." *Id.* (emphasis added).

Our Office has previously observed that an action of a school board “is not normally individual action, but the result of collective decisions.” *Op. S.C. Att’y Gen.*, 1972 WL 25210 (February 18, 1972). Our Office reiterated this in a 1984 opinion, which observed that as a public body, a school board “is authorized to act only by collective action through a majority of its membership.” *Op. S.C. Att’y Gen.*, 1984 WL 566300 (September 21, 1984). Consistent with these prior opinions, and in the absence of an express mandate that each elected board member obtain a unique bond, we believe a court most likely would conclude that Section 59-19-160 may be satisfied by a single bond which covers the school board as a body.

Under this statute, the county board of education approves the bond given by the school board. *Id.* Beyond that, section 59-19-160 does not expressly charge any particular office with a duty to confirm the bond exists. *See id.* However, it appears that a member of the public typically would be able to independently verify the bond exists through, for example, public records or the South Carolina Freedom of Information Act. *See S.C. Code Ann. § 30-4-10 et seq.*

#### Question 2

Next, your constituent asks:

*[S.C. Code Ann. §] 8-3-60 addressing assumption of office before submitting bond states it shall be unlawful for any elected trustee to any position shall be guilty of a misdemeanor and fine of \$500 or jail time of no less than 3 months. To confirm in an abstract question of the law, can you confirm this statute will apply to those required to hold a bond under 59-19-160 and how one may hold a trustee accountable if not following the above mentioned statutes. Under this statute or other state law, who is responsible for confirming such bond exists, and if not, who is responsible for determining and confirming this punishment is properly expedited?*

Section 8-3-60 reads in full:

It shall be unlawful for any person to assume or attempt to assume the duties of any office for which a bond is required, without having given the bond required. Any person assuming or attempting to assume the duties of any office as aforesaid shall be guilty of a misdemeanor and shall be subject to a fine of five hundred dollars or imprisonment for not less than three months, in the discretion of the court.

As more fully described above, section 59-19-160 imposes a duty upon the school board trustees to obtain a bond prior to taking control of certain school property. Generally, questions relating to the application of a criminal statute are necessarily fact-specific questions which are outside the proper scope of an opinion of this Office. To the extent that this criminal statute is violated, it would be investigated and prosecuted by law enforcement and a prosecutor with jurisdiction, such as the county sheriff and the circuit solicitor.

Our Office's longstanding policy is to defer to magistrates in their determinations of probable cause, and to local officers and solicitors in deciding what charges to bring and which cases to prosecute. Law enforcement officers and solicitors generally have discretion in how they allocate the limited resources that the taxpayers provide to them.

### Question 3

*[S.C. Code Ann. § 8-3-70 [requires that a] public officer or elected trustee shall not collect or draw salary until bond is given under the requirements of 59-16-160. To confirm in an abstract question of the law, can you confirm this statute applied to those required to have a bond under 59-19-160, and how one may hold a trustee accountable for not following the above mentioned statute. Under this statute or other state law, who is responsible for confirming such bond exists, and if not, who is responsible for determining pay is withheld until bond is acquired and submitted?*

Section 8-3-70 reads in full: "No executive, judicial or other officer, elected or appointed to any office in the State, shall be entitled to receive any pay or emoluments of office until he shall have been duly commissioned and qualified and shall have given bond when so required to do by law." S.C. Code Ann. § 8-3-70. As more fully described above, section 59-19-160 imposes a duty upon the school board trustees to obtain a bond prior to taking control of certain school property.

Section 8-3-70 does not expressly charge any particular office with a duty to confirm the bond exists. *See id.* Rather, as a practical matter, it is foreseeable that various public officials, such as the county treasurer, may have cause to confirm the existence of a bond in the course of their duties.

An elected school board trustee is accountable to the electors, who may express their dissatisfaction by ballot. Furthermore, the governor has the power to hold a school board member accountable by removal from office in certain cases. Section 59-19-60, as amended and effective April 25, 2022, reads in full:

Notwithstanding any provision of law to the contrary, school district trustees who wilfully commit or engage in an act of malfeasance, misfeasance, chronic unexcused absenteeism, conflicts of interest, misconduct in office, or persistent neglect of duty in office, or are deemed medically incompetent or medically incapacitated, are subject to removal by the Governor upon any of the foregoing causes being made to appear to the satisfaction of the Governor. Before removing any such officer, the Governor shall inform him in writing of the specific charges brought against him and give him an opportunity on reasonable notice to be heard. Vacancies occurring in the membership of any board of trustees for any cause shall be filled for the unexpired term in the same manner as provided for full-term appointments.

S.C. Code Ann. § 59-19-60; *see also* Act 138, 2022 S.C. Acts \_\_\_\_. Of course, the question of whether the failure of a school district board of trustees to secure a bond as required by section 59-19-60 would give rise to removal pursuant to this statute would be a factual question outside the scope of an opinion of this Office. *See also Op. S.C. Att’y Gen.*, 1983 WL 181729 (January 27, 1983) (opining that “the governor . . . is given constitutional authority to suspend public officials indicted for crimes involving moral turpitude.” *Id.* (citing S.C. Const. art. 6 § 8).

With that caveat, there is precedent in South Carolina law for the Governor to remove a public official who has failed to maintain a required bond. In the case of *Spivey v. Fidelity & Deposit Co. of Maryland*, 162 S.C. 143, 160 S.E. 275 (1931), the South Carolina Supreme Court was faced with two competing claims to the office of county sheriff when an elected sheriff failed to maintain the required surety bond and the Governor moved to replace him. In *Spivey*, the elected sheriff obtained a surety bond, but during his term the surety company sought to withdraw and the sheriff did not obtain a replacement bond. It also was alleged that the sheriff “had breached the conditions of his bond in many particulars,” including that “he had collected on delinquent tax executions placed with him by the county treasurer . . . , which he had not turned in to the treasury.” *Id.*

Our State’s highest court held that the removal by the Governor was proper, writing:

Under the law of this state, a sheriff is required to give a good and sufficient bond, with proper surety, guaranteeing the faithful performance of the duties of his office. The affidavits presented to Judge Johnson and to Governor Blackwood were entirely sufficient to show that the county of Jasper, the state of South Carolina, and all those supposed to be protected by the sheriff’s official bond, did not have the protection the law intended for them to have. The facts before the Governor

were sufficient, under all the circumstances, to justify him in declaring the office of sheriff of Jasper county vacant.

*Id.* The Court further observed that the sheriff

[had] not offered to defend himself from the gross charges of official misconduct brought against him by the county board of commissioners of his county, charged with the important duty of seeing that the officers of the county have sufficient bonds to protect the general public from wrongdoing as well as the taxpayers whose interests are entrusted so much to his care.

*Id.* This latter statement is dicta but is useful as a description of the purpose of surety bonds required for public officials.

#### Question 4

Finally, your constituent asks:

*[S.C. Code Ann. §§] 8-3-80, 8-3-90, and 8-3-100 address[] the requirement to furnish a surety bond, and authorized surety bonds. To confirm, in an abstract question of the law, can you confirm whether or not these statutes or any other area of South Carolina Law confirm if a general liability insurance policy will suffice for the coverage of State Statute 59-19-160, and if so is there a statute speaking to such approval of interchangeable verbiage. If not, and under this statute, who is responsible for confirming this change of legal entity requirement, and who is responsible for determining if an insurance policy is sufficient to adequately comply with the above mentioned statutes.*

The referenced statutes read in full:

Before any county official, other than a magistrate, constable or rural county policeman, who is required by law to give bond shall enter into the discharge of the duties of his office he shall secure bond in some reliable surety company authorized to do business in this State, except that if any official be refused bond by any of such surety companies, after proper application, a personal bond shall be accepted when approved as provided by law.

S.C. Code Ann. § 8-3-80.

Solvent guaranty companies, surety companies, fidelity insurance companies and fidelity and deposit companies incorporated and organized under the laws of this State or any other state of the United States or foreign governments for the purpose of transacting the business of fidelity insurance which have a paid-up capital or surplus of two hundred fifty thousand dollars and which shall have complied with all the requirements of law as to a license required by this State may, upon proper proof thereof and upon production of evidence of solvency, be accepted upon the bonds of all city, county and State officers of this State. The various officers of this State whose duty it is to approve the sureties upon such bonds may accept such a company as one of the sureties or the only surety upon such bond as the solvency of such company may warrant. But no person having the approval of any bond shall exact that it be furnished by a guaranty company or by any particular guaranty company. Any such bond shall be made payable to the State.

S.C. Code Ann. § 8-3-90. Finally, Section 8-3-100 states “When the official of any county secures bond from a surety company the cost of such bond shall be paid by the governing body of the county out of the ordinary county funds.” S.C. Code Ann. § 8-3-100.

We note first that the question of whether a particular insurance policy satisfies a statute is essentially a question of coverage and a fact-specific question which is beyond the scope of an opinion of this Office. With that caveat, we believe a court may well conclude that a general liability policy satisfies the requirements of section 59-19-160 if the policy were written to conform with the statutory requirements. The express, stated purpose of the bond required by section 59-19-160 is to ensure “the faithful discharge of the trust reposed in them in respect to such property.” S.C. Code Ann. § 59-19-160. The obvious goal is to protect the school district from material loss of their property. *See id.*; *see also Spivey v. Fidelity & Deposit Co. of Maryland*, 162 S.C. 143, 160 S.E. 275 (1931) (observing in dicta that the purpose of a surety bond is “to protect the general public from wrongdoing as well as the taxpayers whose interests are entrusted so much to [a public official’s] care.”).

Section 8-3-80 directs county officials in need of a bond to attempt to “secure bond in some reliable surety company.” S.C. Code Ann. § 8-3-80. Some version of this statute dates at least to the 1896 Code of Laws, and the current language – first appearing in the 1952 code – strikes the modern reader as archaic. But the operation of section 8-3-80 becomes clearer when read in conjunction with 8-3-90, which provides that local bonds could be underwritten by variety of licensed providers: “[s]olvent guaranty companies, surety companies, fidelity insurance companies and fidelity and deposit companies incorporated and organized under the laws of this State or any other state of the United States or foreign governments.” S.C. Code Ann. § 8-3-80. The statute simply requires that they be solvent and licensed in this State “for the purpose of transacting the business of fidelity insurance.” Even to the modern reader, it is obvious that section



8-3-90 describes what we commonly understand as “insurance companies.” This understanding comports with Chapter 15, which contains statutes specifically directed at “surety insurers,” within Title 38, which governs insurance generally. *Cf.* S.C. Code Ann. § 38-15-10 *et seq.* Title 38 defines “surety” as “insurance or a bond that covers obligations to pay the debts, or answer for the default, of another, including faithlessness in a position of public or private trust.” S.C. Code Ann. § 38-1-20(54).

Section 8-3-90 expressly provides that such underwriters “may . . . be accepted upon the bonds of all . . . county . . . officers of this State.” S.C. Code Ann. § 8-3-90. Moreover, the statute is careful not to categorically require a precise underwriter for the bond: if a person is in a position to approve a bond covered by section 8-3-90, they cannot require that it be guaranteed only by a particular underwriter. *Id.*

In summary: if a century ago a school board went to a licensed insurer to obtain a unique bond to comply with section 59-19-160, and today that same coverage is part of a larger general liability policy, we believe a court would hold there has been, at least, substantial compliance with the statute. When written, section 8-3-80 expressly contemplated a variety of possible underwriters and was careful to provide for flexibility by simply requiring that they be solvent and licensed in this State. *Id.* Similarly, we believe that a court would hold that the key question is not precisely what the bond is called, but whether the school district is protected if the trustees are faithless in their duties. Under that approach, a court may well hold that a general liability policy satisfies the requirements if the policy were written to conform with the statutory requirements. *See id. & cf.* S.C. Code Ann. § 59-19-160. While the language of the statutes is archaic, we believe a court would interpret them in a manner consistent with the modern insurance system. *Cf.* S.C. Code Ann. § 38-15-10 *et seq.* (insurance statutes relating to surety insurers).

### **Conclusion**

In conclusion, we hope that this discussion aids your constituent in understanding the purpose of the bond required in section 59-19-160, and how we believe a court would weight challenges alleging noncompliance with the statutory requirements. While the language of some of these the statutes is archaic, we believe a court would interpret them in a manner consistent with the modern insurance system. *Cf.* S.C. Code Ann. § 38-15-10 *et seq.* (insurance statutes relating to surety insurers).

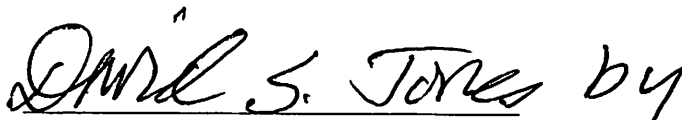
The express, stated purpose of the bond required by section 59-19-160 is to ensure “the faithful discharge of the trust reposed in them in respect to such property.” S.C. Code Ann. § 59-19-160. The obvious goal is to protect the school district from material loss of their property. *See id.; see also Spivey v. Fidelity & Deposit Co. of Maryland*, 162 S.C. 143, 160 S.E. 275 (1931) (observing in dicta that the purpose of a surety bond is “to protect the general public from

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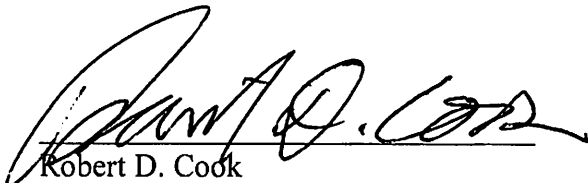
We believe a court would conclude that Section 59-19-160 may be satisfied by a single bond which covers the school board as a body and may well conclude that a general liability policy satisfies the requirements if the policy were written to conform with the statutory requirements. *See id. & cf. S.C. Code Ann. § 38-15-10 et seq.* (insurance statutes relating to surety insurers). Of course the question of whether a particular insurance policy satisfies a statute is essentially a question of coverage and a fact-specific question which is beyond the scope of an opinion of this Office.

Sincerely,

  
David S. Jones  
Assistant Attorney General

*by RDC*

REVIEWED AND APPROVED BY:

  
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