



ALAN WILSON  
ATTORNEY GENERAL

June 11, 2025

Mr. John E. Tyler  
General Counsel  
South Carolina Department of Education  
849 Learning Lane  
West Columbia, SC 29172

Dear Mr. Tyler:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter requests an opinion addressing the following:

The South Carolina State Board of Education seeks an opinion on an issue as it relates to South Carolina Code§ 59-40-170 and the requirement that a charter school's board of directors or charter committee be given the first refusal to purchase or lease a building that has been declared surplus by a school district and the district has chosen to sell or lease the building. The State Board of Education recently considered a request from a school district to dispose of an undeveloped piece of property. ...

At the State Board's meeting to consider the disposal request, questions were raised as to whether the school district was required to first provide right of refusal to any charter school board of directors or charter committee that would like to purchase or lease the property. While S.C. Code §§ 59-23-210, 220, and 240 make separate reference to, "public school buildings and property," the SCDE is not aware of any legal opinion specially interpreting the scope of the term "building" for purposes of S.C. Code§ 59-40-170.

While the plain language of the statute might suggest one answer, S.C. Code§ 59-40-30 instructs that Chapter 40 "be interpreted liberally to support the findings and goals of this chapter and to advance a renewed commitment by the State of South Carolian to the mission, goals, and diversity of public education." Additionally, the General Assembly has expressed a specific and significant interest in the support of public charter schools. Two examples of this include expanding the pathways by which charter schools may be authorized (S.C. Code § 59-40-40(4))

including charter school students in interscholastic activities at traditional public schools (S.C. Code § 59-63-100).

Therefore, the State Board of Education has postponed consideration of its review and approval of this matter and seeks an opinion as to whether public school property that does not contain a building is subject to the requirements of S.C. Code §59-40-170.

### Law/Analysis

It is this Office's opinion that S.C. Code § 59-40-170 does not apply to public school properties that do not contain a building. This Opinion will interpret section 59-40-170 according to the rules of statutory construction. The primary rule of statutory construction is "that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994). "The court has no right to add the words [the Legislature] omitted, nor to interpolate them 'on conceits of symmetry and policy.'" Kinard v. Moore, 220 S.C. 376, 388, 68 S.E.2d 321, 325 (1951). The text of section 59-40-170 uses the term "building" and "portion of buildings" several times, but does not use the term "property."<sup>1</sup> As your letter notes, in other statutes applicable to the State Department of Education, the General Assembly expressly referred to "public school buildings and property." S.C. Code §§ 59-23-210, -240. Interpreting section 59-40-170 to apply to property without a building on its premises would require reading the term "property" into the statute. Even liberally interpreting a statute does not permit adding words to broaden its application. Kinard, supra.

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<sup>1</sup> The Department of Education shall make available, upon request, a list of vacant and unused buildings and vacant and unused portions of buildings that are owned by school districts in this State and that may be suitable for the operation of a charter school. The department shall make the list available to applicants for charter schools and to existing charter schools. The list must include the address of each building, a short description of the building, and the name of the owner of the building. Nothing in this section requires the owner of a building on the list to sell or lease the building or a portion of the building to a charter school or to any other school or to any other prospective buyer or tenant. However, if a school district declares a building surplus and chooses to sell or lease the building, a charter school's board of directors or a charter committee operating or applying within the district must be given the first refusal to purchase or lease the building under the same or better terms and conditions as it would be offered to the public.

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Page 3

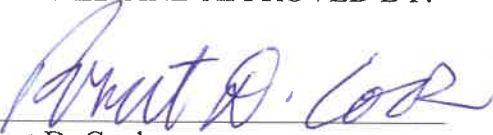
June 11, 2025

Sincerely,



Matthew Houck  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General