



ALAN WILSON
ATTORNEY GENERAL

May 6, 2024

Ms. Rebecca Blackburn Hines
Chair
Board of Trustees
Lexington-Richland School District Five
1020 Dutch Fork Road
Irmo, South Carolina 29063

Dear Ms. Blackburn Hines:

We received your letter requesting an opinion of this Office concerning budget transfers within Lexington-Richland School District Five's (the "District's") operating budget after it has been approved by the District's board. Specifically, you ask "whether or not, South Carolina school boards must approve mid-year budget transfers" and "if mid-year budget transfers may be done without board approval, are there any limitations as to the type or amount of budget transfers which can be made without approval?"

Law/Analysis

The South Carolina Constitution provides: "each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year." S.C. Const. art. X, § 7(b) (2009). Additionally, section 6-1-80(A) of the South Carolina Code (2004) requires school districts "provide notice to the public by advertising the public hearing before the adoption of its budget for the next fiscal year in at least one South Carolina newspaper of general circulation in the area." This statute also states the "notice must be given not less than fifteen days in advance of the public hearing and must be a minimum of two columns wide with a bold headline" and goes on to describe what must be included in the notice. S.C. Code Ann. § 6-1-80. As we stated in a 2011 opinion:

Public schools of this State are governed by boards of trustees. Op. S.C. Atty. Gen., March 13, 1996 [noting that S.C. Code Ann. §59-19-10 bestows upon school trustees the authority for the "management and control" of each school district]. An opinion of this office dated February 16, 1983, further indicated that ". . . the board of trustees of a school district is responsible for the management and control of the district, subject only to the supervision and orders of the county board of education if there is a county board. . . (and) . . . has the power to make rules and regulations and to adopt policies."

Op. Att’y Gen., 2011 WL 3918179 (S.C.A.G. Aug. 25, 2011). As such, we believe a school’s board of trustees is responsible for establishing a district’s budget and ensuring compliance with section 6-1-80.

In addition to these constitutional and statutory provisions, some districts’ budgetary authority is provided for by local law.¹ Therefore, to answer your question regarding school boards in general, we would have to look at each individual district’s local law to determine how to handle mid-year budget transfers. We presume you are specifically interested in the District, and therefore will consider its local laws. Initially, we note the unique creation of the District, which according to the District’s website “was organized by action of the Lexington County Board of Education in 1951 and the Richland County Board of Education in 1952.” <https://www.lexrich5.org/our-district/our-district>. Therefore, unlike many school districts in this state, the District was not created through an act of the Legislature. However, throughout the years, the Legislature adopted local laws concerning the District. While most of these local laws primarily pertain to the composition of the District’s board, a 1979 act vested authority in the District’s board to determine and levy its school tax. 1979 S.C. Acts 280. However, we did not find any local laws addressing the District’s budgetary authority or how to handle budget transfers, therefore we find the District’s responsibility to create and maintain a budget comes from the constitutional and statutory law set forth above. Moreover, we believe this authority and responsibility rests with the District’s board as it is charged with the management and control of the District.

Your letter indicates that while the District’s board approves an annual budget, a District policy allows budget transfers of up to \$10,000 without board approval and the board is considering allowing “unlimited transfers within the same accounts/functions (without increasing the total budget) without board approval and transfers between accounts/functions up to \$250,000 without board approval.” We believe allowing budget transfers without board approval could be viewed by a court as an unauthorized delegation of the board’s discretionary authority.

As explained above, the Legislature vested authority over the management and control of school districts with their boards of trustees and we believe this included the responsibility to create and maintain its budget in accordance with section 6-1-80. Creating and maintaining a budget involves and exercise of discretionary authority. While we recognize the board may delegate administrative and ministerial duties to the District employees, we have long recognized administrative bodies cannot delegate their discretionary authority. See Op. Att’y Gen., 2005 WL 1024603 (S.C.A.G. Apr. 14, 2005) (stating “discretionary authority generally may not be subdelegated without express statutory authority.”); Op. Att’y Gen., 1985 WL 166051 (S.C.A.G. Aug. 8, 1985) (“Its is well recognized that there must exist statutory authority for an administrative officer or agency to subdelegate any portion of the authority which has been delegated to him by statute.”); Op. Att’y

¹ In past opinions, we discussed various local laws governing school district budgets. For example, in a 2015 opinion we discussed the local law governing the budget for School District Four in McCormick County. Op. Att’y Gen., 2015 WL 8773706 (S.C.A.G. Nov. 24, 2015). Additionally, in 2016 we discussed the local law governing the budget for the Charleston County School District, which included a provision on budget transfers. Op. Att’y Gen., 2016 WL 6496887 (S.C.A.G. Oct. 25, 2016).

Gen., 1979 WL 42873 (S.C.A.G. Mar. 19, 1979) (“Unless provided otherwise by statute, governmental entities cannot further delegate any discretionary powers.”). As such, it is our opinion that the District’s board may not delegate authority to employees of the District to transfer funds within its budget without express approval of the District’s board.

Moreover, we believe a contrary interpretation would run afoul of the Legislature’s intent regarding the formalities required under section 6-1-80. “The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.” Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (citation omitted). By requiring notice and a public hearing prior to the adoption of an annual budget, we gather the Legislature intended for the budgeting process to be open to the public. We believe allowing District employees to subsequently reorganize the budget outside the view of the public is contrary to the Legislature’s intent regarding section 6-1-80.

In your opinion request, you referred to a 2006 opinion in which we discussed the ability of a county council to transfer funds from one county department to another after the adoption of the county’s budget. Op. Att’y Gen., 2006 WL 1376908 (S.C.A.G. May 8, 2006). We cited section 4-9-140 of the South Carolina Code, which in addition to requiring county councils to adopt operating and capital budgets, specifically allows for budget transfers so long as they are approved by the county council. Id. We determined this approval required must come in the form of an ordinance adopted by the council. Id. While we did not find specific authority under state law specifying school districts may make budget transfers so long as their board approve them, given the responsibility of school districts to similarly adopt annual budgets and the fact that we believe the Legislature intended for this responsibility to be carried out by their boards in accordance with section 6-1-80, we similarly believe a school board must also take formal action to make budget transfers.

Conclusion

Some school districts have local laws pertaining to their budgetary authority and more specifically when and how budget transfers may be authorized. We found no local law pertaining to the District in this regard and therefore rely solely on the general law applicable to all districts to answer your question. Article X, § 7(b) of the South Carolina Constitution requires school districts to create annual budgets. Section 6-1-80 of the South Carolina Code specifies notice and a public hearing are required for a school district to adopt a budget. The formalities required under 6-1-80 indicate the Legislature’s intent for budgetary authority to rest with school boards, which are charged with management and control of school districts. Because creating and maintaining a budget is a discretionary function, we do not believe the District’s board, without authority from the Legislature to the contrary, may delegate this function to District employees. As such, we do not believe the District’s board can permit District employees to make budget transfers without the approval of the board.

Ms. Rebecca Blackburn Hines
Page 4
May 6, 2024

Sincerely,

A handwritten signature in blue ink, appearing to read "Cydney Milling".

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in blue ink, appearing to read "Robert D. Cook".

Robert D. Cook
Solicitor General