



ALAN WILSON
ATTORNEY GENERAL

September 20, 2024

Dr. Jerome P. Singleton
Commissioner
S.C. Highschool League
P.O. Box 211575
Columbia, SC 29221

Dear Dr. Singleton:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

As Commissioner of the South Carolina High School League (“League”), I am writing to request an advisory opinion regarding the application of 2024-2025 budget Proviso 1.49, and Budget Proviso 1.118, with respect to three new changes added to this year’s Budget Proviso for the Department of Education. These new changes have created some uncertainty as to how the League should apply its governing rules in order comply with the provisos.

By way of background for these changes, the 2024-2025 Annual Appropriations Act contains a budget proviso (Proviso 1.49) for the Department of Education that contains the following provisions, and I have highlighted the new language below in question:

1.49. (SDE: Interscholastic Athletic Association Dues) (A) A public school district supported by state funds shall not use any funds or permit any school within the district to use any funds to join, affiliate with, pay dues or fees to, or in any way financially support any interscholastic athletic association, body, or entity unless the constitution, rules, or policies of the association, body, or entity contain the following:

...

(3)(a) an appeals process in which appeals of the association, body, or entity are made to a disinterested third-body appellate panel which consists of seven members who serve four year terms, with one person appointed by the delegation of each congressional district;

...

(d) an appeal stays the determination of a sanction made by the association, body, or entity, or staff member of such, pending the outcome of the appeal;

...

(5) a uniform system applicable to all member schools establishing fines for the cancellation of a scheduled game regardless of if the game is in or out of region. At a minimum, the school canceling the scheduled game must be fined an amount equal to the cost incurred for officials, tickets, and concessions. If the game is rescheduled or cancelled for a documented health or safety reason, the school shall not be fined;

Budget Proviso 1.49 (emphasis added).

Additionally, Proviso 1.118 was added in its entirety to the 2024-2025 Annual Appropriations Act, and the highlighted provision is of concern to the League:

1.118.(SDE: Interscholastic athletics) (A) No funds appropriated or authorized in this act that are distributed to a school district may be used to deny individual students who attend independent schools in this State the opportunity to try out for and, if selected, participate in an interscholastic athletic program offered at a public school in the district if the:

(1) student resides within the attendance zone boundaries of the public school;

(2) independent school that the student attends is not a member of the South Carolina High School League and the private school's

enrollment for grades nine through twelve does not exceed two hundred students; ...

Budget Proviso 1.118 (emphasis added).

Sanctions Stayed by an Appeal

The first change is the provision added to Proviso 1.49 that states “an appeal stays the determination of a sanction made by the association pending the outcome of the appeal.” I would like to know if this requirement of a stay would apply to the minimum sanction applicable under the League bylaws and rules and regulations.

For example, under the Unsportsmanlike Conduct provisions of the League’s Rules and Regulations, an athlete who is ejected for using abusive language, flagrantly or maliciously contacting another person, making obscene gestures to opponents or spectators, shall be ineligible for a minimum of the next contest (i.e. 1 game) to the maximum of one year depending on the seriousness of the violation. Furthermore, under the League Constitution, the League’s Executive Committee “shall not reduce any program sanction or fines below the established minimum for verified League violations committed by member schools.”

The new language in the Proviso could now result in a student athlete being allowed to continue to participate while pursuing an appeal of a minimum sanction, despite the fact that the League’s bylaws do not allow the Executive Committee (first level of appeal) to provide relief from the minimum sanction. We are concerned about the impact on our efforts to promote good sportsmanship and fair competition when the appeal process could be clearly manipulated to delay a student athlete from serving a minimum suspension, particularly when the League does not allow the Executive Committee to provide relief in such an appeal.

Therefore, we would like to know if the League would still comply with this new provision of Proviso 1.49 if the stay were only to apply to the appeal of sanctions in excess of the minimum penalty that could be imposed.

Uniform System for Fines of Forfeited Games

The second change to Proviso 1.49 requires the establishment of a “uniform system” for establishing fines for the cancellation of a scheduled game. It also requires that the school cancelling the scheduled game must be fined an “amount equal to the cost incurred for officials, tickets, and concessions.” Our concern is that it would be difficult to establish a uniform system for determining the amount

of a fine given the variability of costs depending on the individual circumstances of the cancellation.

For example, if the forfeiting team is the home team, there would be very few costs incurred by visiting team, provided the forfeit occurs before the day of the game. The visiting team aggrieved by the forfeit would not have incurred costs for travel, tickets, or concessions. On the other hand, if the forfeiting team is the visiting team, the amount of ticket sales and concession sales would be purely speculative. We also would like to avoid the possibility of a home team that receives a forfeit from being able to artificially inflate the “cost incurred” for tickets and concessions. The League also anticipates that the forfeiting school may disagree with another school’s calculation of an “amount equal to the cost incurred for officials, tickets, and concessions.”

In our view, the best way to establish a uniform system for fines of forfeited games is to set a standard fine that would apply whether the forfeiting team is the home team or the visiting team. Even with a standard fine for forfeitures, there will be times when the fine may exceed the actual costs incurred by the non-forfeiting team and times when the fine may be lower than the actual costs incurred by the non-forfeiting team. However, the League's concern is that there could potentially be a big disparity in determining a fine when the forfeiting school is the home team (i.e. minimal actual costs incurred by the non-forfeiting team) versus when the forfeiting team is the visiting team. Even in the latter situation, the League has concerns as to how a non-forfeiting home team would calculate their anticipated Financial loss due to lost ticket sales and concession sales.

Therefore, we would like to know if the League would comply with this new provision of Proviso 1.49 if it established a standard fine to be paid to the non-forfeiting school instead of requiring non-forfeiting schools to submit a proposed accounting of costs incurred for officials, tickets, and concessions in every instance.

Determination of Enrollment Count for Private Schools

Finally, under the new Proviso 1.118, private school students are allowed to participate on sports teams at public schools under certain conditions. One of those conditions is that the “independent school that the student attends is not a member of the South Carolina High School League and the private school’s enrollment for grades nine through twelve does not exceed two hundred students.”

The League seeks clarity as to how to determine the point in time at which the private school’s enrollment count of less than two hundred students will be

reviewed. For example, the League could use any number of dates for determining whether a private school student meets the criteria of attending an independent school below this required enrollment count, such as:

- The first day of school for the independent school
- The first day of fall, winter, and spring sports seasons for the public school
- The first contest of a particular sports team at the public school
- The date on which the private school student notifies the superintendent of the public school district in writing of his intent to try out for a particular sport at the public school (required by Proviso 1.118)

The League's concern is the fluctuating enrollment counts could impact a student's eligibility based on the point in time at which the private school's enrollment count is considered. Therefore, the League would like to know if Proviso 1.118 mandates the point in time to consider the private school's enrollment count. If not, we would like to know if the League complies with this new provision by choosing a specific point in time for the determination of an independent school's enrollment count and applying it uniformly to all private school students who may wish to obtain eligibility under this Proviso.

Law/Analysis

In order to address your questions, this opinion will analyze the provisos according to the principles of statutory construction. When interpreting legislation, the primary goal is to determine the General Assembly's intent. See Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Further, "[a] statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015). With these principles in mind, this opinion will analyze the provisos to address the questions raised in your letter.

I. Sanctions Stayed by an Appeal, FY 2024-25 Budget Proviso 1.49(A)(3)(d)

It is this Office's opinion that Budget Proviso 1.49(A)(3)(d) requires that stay of all sanctions until an appeal process is finalized. The plain language of the proviso states "an appeal stays the determination of a sanction ... pending the outcome of an appeal." Id. Its

plain language does not demonstrate legislative intent regarding classifications of sanctions. Regardless of the severity of a sanction, once an appeal is filed, the proviso apparently requires treating all sanctions as stayed.

II. Fines of Forfeited Games, FY 2024-25 Budget Proviso 1.49(A)(5)

It is this Office's opinion that a court would hold Budget Proviso 1.49(A)(5) does not permit establishing a "standard fine" if that fine "may be lower than the actual costs incurred by the non-forfeiting team." The proviso establishes that "at a minimum" the fine must be "equal to the cost incurred for officials, tickets, and concessions." *Id.* The plain language of the proviso requires the amount of the fine to at least meet those listed actual costs and may exceed those costs. It appears the Legislature intended the fine to act as a deterrent to schools that would cancel a game unless it is rescheduled or cancelled for a documented health or safety reason. As you suggest, we agree that the proviso does not require non-forfeiting schools to "submit a proposed accounting of costs ... in every instance." The League may develop a formula to estimate costs or otherwise determine the amount of a fine, but that amount cannot be lower than the costs incurred by the non-forfeiting team.

III. Determination of Enrollment Count for Private Schools FY 2024-25 Budget Proviso 1.118(A)(2)

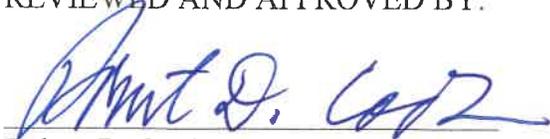
Budget Proviso 1.118(A)(2) does not expressly state nor suggest a date by which the enrollment of an independent school for grades nine through twelve is determined. Legislative or judicial clarification may be necessary to resolve this ambiguity with certainty. In the absence of a stated date or methodology to determine a date, it may be appropriate for the League to refer to the date of the student's written notification of his intent to try out as required by subsection (A)(5). See State v. Henkel, *supra*.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General