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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

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February 24, 2004

The Honorable Dwight A. Loftis  
Member, House of Representatives  
520-A Blatt Building  
Columbia, South Carolina 29211

Dear Representative Loftis:

You have requested an opinion concerning S.C. Code Ann. Section 59-63-70. By way of background, you state the following:

I recently received a telephone call regarding a bill that was passed into law in 2002 regarding the rights of students to participate in club soccer programs at the same time they are playing for their school. The High School League has rules prohibiting a player in school from "dually participating" in the same sport at the same time for an outside team. The telephone call I received described the actions of a local high school soccer coach who instructed his players that if they intended to play on his soccer team at school then they would have to quit the club teams by Monday (this directive was given last week). I would like to request from you an ... opinion on whether SC Code of Laws 59-63-70 would render the coach's decision impermissible by violating the rights of students protected under state law.

**Law / Analysis**

We agree with your conclusion that § 59-63-70 renders the coach's decision impermissible by violating the rights of students protected under state law.

Section 59-63-70 provides as follows:

[d]uring the season for any high school league sport except for football, a student, while a member of a school squad or team engaged in an interscholastic sport except for football, may become a member or participate in an organized team that is independent of the school's control as long as the participation does not interfere with the scheduled league games or practices of the school squad or team. A school or student shall not be declared ineligible for participation in an interscholastic high school league sport except for football because of participation of a student as a

member of an organized team independent of the school's control during the interscholastic sport's season. Any student participating on both a school squad or team and an independent squad shall have on file with the school's athletic director a statement signed by the parent or guardian indicating their child or children have permission to participate on both teams and signed by the independent coach acknowledging that the student's participation shall not interfere with the scheduled league games or practices.

The provisions of this section do not participate on a school football team and an organized football team independent of the school's control.

Act No. 321, § 2 of 2002, subsequently codified as § 59-63-70, enabled South Carolina to join other surrounding states to allow so-called "dual participation" by a student, i.e. simultaneously playing on both a high school team as well as a club team. The purpose of the legislation, as we understand it, was to allow students to participate both in school-sponsored as well as club-sponsored games in every sport except football where the seasons of the two teams may overlap, so long as such participation does not interfere in scheduled school games or practices.

In answering your question, several principles of statutory construction are pertinent. The primary objective in construing statutes is to determine and effectuate legislative intent if possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction either to limit or expand the statute's operation. Where the terms of a statute are clear and unambiguous, the court must apply those terms according to their literal meaning. Paschal v. State Election Commission, 317 S.C. 434, 454 S.E.2d 890 (1995).

Moreover, as noted by our Supreme Court in State ex rel. Thompson v. Seigler, 230 S.C. 115, 94 S.E.2d 231, 233 (1956), the powers of the General Assembly are plenary and it may enact such legislation as is not expressly or by clear implication prohibited by the State Constitution. Finally, an administrative agency possesses no power or authority to add to or materially alter a statute. South Carolina Tax Commission v. South Carolina Tax Board of Review, 278 S.C. 556, 299 S.E.2d 489 (1983). Administrative agencies or officers may only implement the statutory provisions enacted by the General Assembly, not rewrite or disregard it. Banks v. Batesburg Hauling Co., 202 S.C. 273, 24 S.E.2d 496 (1943).

The terms of § 59-63-70 are clear and unambiguous and leave no room for doubt. Such statute requires that a student, while a member of a school team may participate on a club team (except football) "as long as participation does not interfere with the scheduled league games or practices of the school squad or team." Moreover, a school or student shall not be declared ineligible for participation in an interscholastic high school league sport (except for football) because of the

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student's participation "as a member of an organized team independent of the school's control (such as a club team) during the interscholastic sports season."

Accordingly, so long as the requirements of § 59-63-70 are met – i.e. the student's participation in club sports does not interfere with scheduled league games or practices of the team – neither the High School League nor a school district, school or school official may interfere with the student's right to participate in club sports as guaranteed by the statute. Indeed, consistent with § 59-63-70, the High School League's Constitution provides that "[p]articipation on an outside team during a sport season is permitted in all sports except football." See, Constitution of South Carolina High School League, A-24.

#### Conclusion

Therefore, as to your specific question, the soccer coach in question could not lawfully require the players participating on club teams to cease such participation. Assuming the requirements of § 59-63-70 (concerning non-interference with schedule or practice) are met, the students would have a statutorily protected right to participate in club sports.

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/an