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HENRY McMASTER
ATTORNEY GENERAL

June 1, 2006

David Gantt, Esquire
General Counsel
Greenville Technical Charter High School
Pfeiffer Gantt & Gleaton
Symphony Center, 200A South Main Street
Greenville, South Carolina 29601

Dear Mr. Gantt:

In a letter to this office you raised several questions regarding the eligibility of current employees of the Greenville Technical Charter High School to serve on the board of that school. You indicated that the school's board is elected in accordance with S.C. Code Ann. § 59-40-50(B)(9) which states that "[a] charter school must...elect its board of directors annually." Such is a provision in the recently enacted charter school legislation, R283, which was signed by the Governor on May 3, 2006. According to the legislation, such legislation took effect upon the approval by the Governor. Based upon my review, Section 59-40-50(B)(9) read exactly the same prior to the new legislation.

According to your letter, the school's bylaws require the school to elect not more than fifteen board members each year. In the event that the number of directors drops to ten or less, the bylaws require the school to hold another election during the year to fill the vacancies for the remainder of the year. You indicated that presently there are several teachers and administrators serving on the board. The board's annual election occurred on April 25 and the board is scheduled to be sworn in at the end of June. The board serves from July 1 until June 30, consistent with the school's fiscal year. Several of the school's teachers and employees were also elected to next year's board. These school employees were elected but have not yet been sworn into office.

Included in the recently enacted legislation is a new provision, Section 59-40-190(D), which states that "[a] member of a school governing body may not receive pay as an employee in the same school." Based upon my review, it appears that "a school governing body" is the same entity as the "board of directors" provided for by Section 59-40-50(B)(9). According to your letter, prior to the new legislation, the statutes regarding charter schools did not contain any requirements or restrictions on who could serve on the board.

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Referencing such, you have raised several questions. You first asked whether Section 59-40-190(D), which prohibits paid employees from serving on the board, has any impact on the present board that was elected last year. Generally, when interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

Consistent with such, in my opinion, paid employees would be affected by the new legislation that prohibits a member of the school governing body from receiving pay as an employee in the same school. As a result, if these individuals desire to remain as paid employees of the school, they should resign from the school board of directors.

In your next question you asked whether Section 59-40-190(D) prohibits paid employees who were elected on April 25, but who have not yet been sworn in, from serving on next year's board. Consistent with the first question, in my opinion, these paid employees likewise would not be eligible to serve on the board beginning July 1 if they wish to remain as paid employees of the school.

You also asked whether if the paid employees resign from the board because of the prohibition of Section 59-40-190(D), does the school have to hold another election to replace those board members provided that the number of board members does not drop below ten. As referenced above, you stated that the current bylaws require that if the number of directors drops to ten or less, then the school is required to hold another election to fill the vacancies for the remainder of the year. In my opinion, if the number of board members does not drop below ten, consistent with the bylaws, a new election is not required.

In your last question you asked whether there are any provisions in the recently enacted legislation which prohibits the school from electing or appointing paid employees as non-voting members of the school board. Based upon my review, inasmuch as Section 59-40-190(D) states that "[a] member of a school governing body may not receive pay as an employee in the same school", it does not appear that a paid employee should serve as either a voting or non-voting member of the board.

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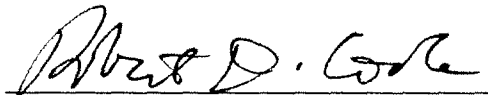
With kind regards, I am,

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles H. Richardson".

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

A handwritten signature in cursive script, appearing to read "Robert D. Cook".

Robert D. Cook
Assistant Deputy Attorney General