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HENRY McMASTER
ATTORNEY GENERAL

June 1, 2006

The Honorable Jeffrey D. Duncan
Member, House of Representatives
327-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Duncan:

In a letter to this office you requested an opinion regarding a charter school's use of facilities and other resources that presently belong to a private school. You stated that a nonprofit corporation, Thornwell Charter School, is applying to open a charter school. The charter, if approved, would allow the school to open in August, 2007. Thornwell Charter School plans to utilize the resources, including facilities, that now belong to the Thornwell Home for Children. Referencing such, you have cited recently-enacted legislation, R. 283, which states in a provision to be codified as Section 59-40-210 that:

[a] school established as a private school, on the effective date of this section, which desires to convert to a charter school shall dissolve and must not be allowed to open as a charter school for a period of twelve months.

Pursuant to another provision in R. 283 to be codified as Section 59-40-60(D),

(e)xcpt as provided in subsection (F), an applicant who wishes to form a charter school shall:

(1) organize the charter school as a nonprofit corporation pursuant to the laws of this State....

For purposes of this legislation, the term "applicant" is defined by Section 59-40-40(3) as

...the person who or nonprofit corporate entity that desires to form a charter school and files the necessary application with the South Carolina Public Charter School District Board of Trustees or the local school board of trustees in which the charter school is to be located. The applicant must also be the person who applies to the Secretary of State to organize the charter school as a nonprofit corporation.

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Also, pursuant to a provision to be codified as Section 59-40-40(1), a "charter school" is defined as

...a public, nonreligious, nonhome-based, nonprofit corporation forming a school that operates within a public school district or the South Carolina Public Charter School District, but is accountable to the school board of trustees of that district which grants its charter.

Therefore, reference is made to the formation of a nonprofit corporation in order to form a charter school.¹ Also a current regulation dealing with charter schools, S.C. Reg. 43-601(II)(G), states that "(t)he charter school must be organized as a South Carolina non-profit corporation and the application must include a copy of the non-profit corporation's articles of incorporation and bylaws."

R. 283 became effective May 3, 2006 upon approval of the Governor. You have questioned whether Section 59-40-210 would prohibit the Thornwell Charter School from using resources and facilities that were used by the Thornwell Home for Children school if the Home closes its school in May, 2007. It is my information that the Thornwell Home for Children is considered to be a private school.

I have been informed that the Thornwell Charter School is a nonprofit corporation pursuant to IRC § 501(c)(3) that is totally separate from the Thornwell Home for Children and its school. I have also been advised as follows:

The application of the Thornwell Charter School has been carefully crafted as an independent, nonprofit corporation unrelated to the current Thornwell Home for Children. All students of the Thornwell Home for Children, including the residential students (orphans), will need to apply to Thornwell Charter School. No preferences in enrollment will be provided other than the specified preferences allowed in the SC Charter School statutes.

The application, furthermore, is specifically at "arms length" in its relationship with "Thornwell" as a private school, particularly in reference to the Planning (Start-Up)

¹As to a public school becoming a charter school, a provision to be codified as Section 59-40-100(A) states that

[a]n existing public school may be converted into a charter school if two-thirds of the faculty and instructional staff employed at the school and two-thirds of all voting parents or legal guardians of students enrolled in the school agree to the filing of an application with the local school board of trustees for the conversion and formation of that school into a charter school.

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Committee members who are listed as trustees of the Thornwell Charter School Corporation. Corporate bylaws are also provided and concur with the charter school as a separate corporation from the private school. The Thornwell Charter School will lease facilities from the Thornwell Home for Children as documented in the application.

I was also advised that all staff members of the present Thornwell Home for Children school will have to apply for positions with the Thornwell Charter School and there are no guarantees of employment with the Charter School.

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).

As referenced, Section 59-40-210 states that “[a] school established as a private school...which desires to convert to a charter school shall dissolve and must not be allowed to open as a charter school for a period of twelve months.” The term “convert” is defined as “to change into another form, substance, state, or product” or to “transform”. American Heritage Dictionary (Houghton Mifflin 2nd College Edition, 1985) at 320. As stated in the opinion of the Texas Attorney General dated September 29, 1988 the term “convert” means “...to change or turn from one state to another...to change or turn from one use, purpose, or function to another.”

Upon review of the factual situation regarding the proposed establishment of the Thornwell Charter School, in the opinion of this office, there does not appear any “desires” by the present school associated with the Thornwell Home for Children “to convert” that school to the Thornwell Charter School as that term is defined above. Inasmuch as it is indicated that the Thornwell Charter School is established as a nonprofit corporation totally separate from the Thornwell Home for Children and its school, there can be no “conversion” of the Thornwell Home school to the Thornwell Charter School. Therefore, based upon my understanding and the common and ordinary definition of the term “convert”, there is no “transformation” of the Thornwell Home school to the Thornwell Charter School or “opening” by the Thornwell Home school as the Thornwell Charter School. Instead, it appears that there is the establishment of a separate school, the Thornwell Charter School, a separate, nonprofit corporation, which simply plans to utilize the facilities and

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resources of the Thornwell Home for Children school. As a result, in the opinion of this office, there is no conflict with Section 59-40-210 in such planned opening of the charter school.

If there is anything further, please do not hesitate to contact me.

With kind regards, I am,

Sincerely,



Charles H. Richardson

Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook

Assistant Deputy Attorney General