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HENRY McMASTER
ATTORNEY GENERAL

May 23, 2006

Robert C. Norwood, Chairman
Rock Hill School District Three Board of Trustees
660 North Anderson Road
Rock Hill, South Carolina 29730

Dear Mr. Norwood:

I understand from your letter you request an opinion of this Office on behalf of the Rock Hill School District Three Board of Trustees (the "Board") concerning the appropriation of surplus funds from the South Carolina Education Lottery. In your letter, you state:

In recent weeks, as the General Assembly has been in session deliberating matters of great importance to our state, we have learned of a situation that we would like for you to issue an opinion. It is our understanding that an 11 million dollar surplus from the South Carolina Educational Lottery was discovered. According to State Law 59-150-350, Educational Lottery funds can only be used for education. The funds were intended to "supplement" not "supplant" current educational funding. It is our understanding that the General Assembly has indeed found ways to maneuver the 11 million dollars into the general funding allocation budget line item, and, as a result, fund several one-time special projects. Unless there has been some process developed that we are not aware of, we can't see where the 11 million dollars has been spent on education as required by law.

Although we do not have enough information to opine on the specific appropriations to which you refer, in this opinion we will attempt to provide you with guidance as to appropriate expenditures, both generally and specifically with regard to surplus funds, pursuant to the South Carolina Constitution and the South Carolina Education Lottery Act.

Law/Analysis

We begin by noting the presumption that the Legislature is presumed to act within its constitutional powers. Carter v. Linder, 303 S.C. 119, 124, 399 S.E.2d 423, 425 (1990). Furthermore, in analyzing section 59-150-350, which you referred to in your letter, and other

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pertinent statutory and constitutional authority, we must keep in mind the rules of statutory construction to determine whether the use of South Carolina Education Lottery ("Education Lottery") funds for the purposes mentioned in your letter is prohibited. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Buist v. Huggins, 367 S.C. 268, ___, 625 S.E.2d 636, 340 (2006). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. The real purpose and intent of the lawmakers will prevail over the literal import of particular words." Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, ___, 626 S.E.2d 6, 10 (2005). "When construing the constitution, the Court applies rules similar to those relating to the construction of statutes." J.K. Const., Inc. v. W. Carolina Reg'l Sewer Auth., 336 S.C. 162, 170, 519 S.E.2d 561, 565 (1999).

In 2000, the South Carolina electorate voted in a referendum to amend article XVII, section 7 of the South Carolina Constitution, which prohibited lotteries, to allow for the establishment of the Education Lottery. In 2001, the Legislature amended this provision of the State Constitution to provide, in relevant part, as follows:

Only the State may conduct lotteries, and these lotteries must be conducted in the manner that the General Assembly provides by law. The revenue derived from the lotteries must first be used to pay all operating expenses and prizes for the lotteries. The remaining lottery revenues must be credited to a separate fund in the state treasury styled the 'Education Lottery Account', and the earnings on this account must be credited to it. Education Lottery Account proceeds may be used only for education purposes as the General Assembly provides by law.

(emphasis added). Furthermore, in the same year, the Legislature passed the South Carolina Education Lottery Act, which among other things, establishes certain guidelines for the operation of the Education Lottery. The act includes several provisions pertaining to expenditures of Education Lottery funds. Namely, the Legislature passed section 59-150-350 of the South Carolina Code (2004), which affords guidance related to expenditures and surplus funds. This statute states:

(C)(1) Pursuant to Section 11-9-880, the Board of Economic Advisors, in conjunction with the commission, must provide to the General Assembly, in a separate estimate, the amount of projected net lottery proceeds for the upcoming fiscal year. The State Treasurer's Office must estimate the annual interest earnings from commission funds. All interest earnings and other net proceeds must be used for educational purposes and programs.

(2) Appropriations from the Education Lottery Account must be for educational purposes and programs only as defined in Section

59-150-350(D). These appropriations must be used to supplement and not supplant existing funds used for education.

(3) If expenditures for particular educational purposes or programs as defined in this chapter are less than the amounts appropriated, the excess may be retained in the account and expended the following fiscal year for those particular purposes or programs.

Id. (emphasis added). This statute also provides: "Appropriations from the Education Lottery Account must be allocated only for educational purposes and educational programs by the General Assembly in its annual general appropriations bill or any bill appropriating monies for previous or current fiscal years." Id. § 59-150-350(D). Then, this portion of the statute continues by listing various programs that the Education Lottery Account must be use to fund. Id. Section 59-150-350 also provides guidance for the handling surplus funds.

(E) Appropriations by the General Assembly in its annual general appropriations bill or any bill appropriating monies for previous or current fiscal years for educational purposes and programs from the account not committed during the fiscal year must be credited to the Education Lottery Account.

(F) (1) . . .

(2) A surplus in the Education Lottery Account must not be reduced by the General Assembly to correct any nonlottery deficiencies in sums available for general appropriations and vice versa, and a surplus in the Education Lottery Account must not be included in a surplus calculated for setting aside any nonlottery reserve, specifically, without limitation, the General Reserve Fund or the Capital Reserve Fund.

Id. Additionally, section 59-150-355 of the South Carolina Code (2004) states with regard to Education Lottery appropriations: "These appropriations must be used to supplement and not supplant existing funds for education."

This Office issued an opinion dated October 7, 2004 in which Attorney General Henry McMaster addressed an issue involving the appropriation of lottery proceeds to the Department of Alcohol and Other Drug Use Services ("DAODAS"). Op. S.C. Atty. Gen., October 7, 2004. In examining the issue, the Attorney General was informed that DAODAS has three employees who oversee programs that affect students in public schools. Id. However, "the lottery funds would underwrite salaries and other expenses of employees who do not engage in any work related to the public schools." Id. Noting the requirement, pursuant to Article XVII, section 7 of the South Carolina Constitution, that lottery funds be used only for educational purposes, the Attorney General explored what is meant by the term "educational purposes." Id. The Attorney General considered several cases from various jurisdictions finding expenditures were not for educational purposes and

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determined “[i]n each of these cases, while there was a tangential relationship to ‘education’ in the loosest sense of the word, the primary purpose of the expenditure was not education in the traditional understanding of that term.” Id. Quoting the Supreme Judicial Court of Massachusetts in Whitinsville Retirement Society, Inc. v. Town of Northbridge, 477 N.E.2d 407, 409 (Mass. 1985), the Attorney General stated:

the words “educational purpose” are “every day words and should be interpreted ‘according to the common and approved usages of the language . . . without enlargement or restriction and without regard to [the court’s] own conceptions of expediency.’” The issue is whether the plaintiff’s project “is operated primarily for an educational purpose.”

Id.

Considering section 44-49-10 of the South Carolina Code, establishing DAODAS and section 44-49-40 setting forth the powers of the DAODAS, the Attorney General concluded “DAODAS does possess certain authority and responsibility relative to ‘education’ in the broad sense of the word. However, numerous other agencies possess a general relationship to ‘education’ as well.” Id. The Attorney General determined:

Of course, the South Carolina Education Lottery was approved by the voters in 2000 with the understanding that the proceeds therefrom would be used strictly for “education” in the usual sense of the word - i.e. in support of elementary and secondary as well as higher education. Such purpose is reflected in the General Assembly’s enactment following adoption in 2000 of the Constitutional Amendment authorizing the State Lottery of § 59-150-350(D) which enumerates the various educational purposes for which lottery proceeds may be used.

Id. Because funds appropriated to DAODAS would be used for its general operating expenses to fund salaries of employees not engaged in work related to the public schools, the Attorney General opined “‘South Carolina Education Lottery’ proceeds may not be constitutionally used for such purposes. The state Constitution requires that such proceeds must be used for ‘education purposes’ and that requirements must be strictly and steadfastly adhered to.” Id.

We are not privy to the details of “one-time special projects,” as mentioned in your letter, to which the Legislature intends to appropriate the Education Lottery funds. Thus, we cannot opine as to whether the Legislature’s appropriation of these funds for such purposes is in violation of article XVII, section 7 of the South Carolina Constitution or runs afoul of the South Carolina Education Lottery Act. However, we will attempt to provide general guidance with respect to surplus funds.

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First and foremost, Education Lottery funds must be used to fund the purposes and programs listed in section 59-150-350. In your letter you refer to the funds in question as surplus, indicating that the funds are in excess of those required to fund these purposes and programs. Thus, we presume the Legislature satisfied this requirement.

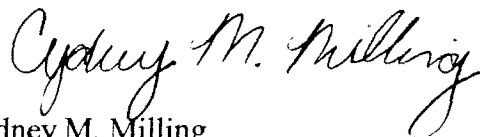
Second, in our review of article XVII, section 7 and the various statutory provisions addressing appropriations of Education Lottery funds, we find it clear that the Legislature and the citizens of the State intended for money to be appropriated solely for educational purposes. Additionally, this conclusion is consistent with our October 7, 2004 opinion finding educational purpose must be served when appropriating Education Lottery funds. Furthermore, in keeping with this opinion, more than a tangential relationship must exist between the purpose for which the funds are to be used and education. The primary purpose of the expenditure must be educational in the plain and ordinary meaning of the term.

Third, we note if such surplus funds consist of funds appropriated for particular educational purposes or programs that were not expended, in accordance with section 59-150-350(C)(3) these excess funds "may be retained in an account and expended the following year for those particular purposes or programs." However, from a plain reading of this section, retention of the excess funds is not required.

Fourth, one must also keep in mind the mandate stated in section 59-150-350(F)(2) that a "surplus in the Education Lottery Account must not be reduced by the General Assembly to correct any nonlottery deficiencies in sums available for general appropriations and vice versa, and a surplus in the Education Lottery Account must not be included in a surplus calculated for setting aside any nonlottery reserve, specifically, without limitation, the General Reserve Fund or the Capital Reserve Fund."

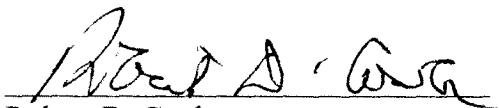
We hope the information provided is helpful to you in addressing the Legislature's appropriation of surplus Education Lottery Funds. If you desire an opinion as to a specific appropriation, please do not hesitate to contact us.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General