August 1, 2007

The Honorable Kevin L. Bryant
Member, South Carolina Senate
104-A North Avenue
Anderson, South Carolina 29625

Dear Senator Bryant:

We understand you desire an opinion of this Office interpreting section 59-21-420(b) of the South Carolina Code. You state that under this provision the State Board of Education "currently operates under the assumption that it must actually hear the request in order to fulfill the statutory requirement." However, in your opinion, "the Code does not state that the board must consider the waiver, thus, the request for a waiver does not compel the board to take action. Requesting a waiver does not implicitly impose a duty on the board." Accordingly, you ask: "Must the Board actually hear an appeal, or is the statute satisfied merely by the submission of the request by a school district?"

Law/Analysis

Section 59-21-420 of the South Carolina Code (2004) is part of the South Carolina Education Improvement Act enacted by the Legislature in 1984. Section 59-21-420(a) calls for the State to appropriate funds to school districts based on enrollment for the following purposes:

> (I) for the renovation, capital improvement, or repair of school classrooms, libraries, laboratories, and other instructional facilities, including music rooms, or (ii) to reduce the millage required to pay principal and interest on bonds issued for such purposes if the district qualifies for the exception provided for in subsection (b) hereof.

Subsection (b) of this provision, of which you are particularly concerned, states:

> If a school district has issued bonds or otherwise undertaken any capital improvement programs during any of the most recent five fiscal years, at least fifty percent of the funds provided in subsection (a) must be used to reduce the millage required to pay debt service on such outstanding bonds.
>
> Provided however, in the event that a school district sold bonds or secured a loan at an interest rate less than prevailing rates and has an identified need for funds in excess of fifty percent of funds provided in subsection (a) or anticipates a significant increase in need for additional classroom space, that district may request a waiver from this requirement by the State Board of Education. After consultation with the State Treasurer on prevailing interest rates and review of the evidence accompanying the waiver request from the school district, and upon certification by the State Treasurer that rates are beneficial to local school district, the State Board of Education may grant a waiver if the evidence is substantiated. The remaining sums may be used either to reduce millage to pay debt service or to pay for capital improvements, repairs, or renovations otherwise authorized during the then current fiscal year. *Provided, Further*, That if, on the occasion when the annual millage would otherwise be increased to provide for capital improvements, repairs, or renovations, there is on hand with the country treasurer sums from the appropriation herein authorized, sufficient to meet all or a portion of the payments of principal and interest on bonds to be outstanding in the ensuing fiscal year, then such portion of the millage required to pay such debt service need not be imposed.

S.C. Code Ann. § 59-21-420(b) (emphasis added).

You question if a school district requests a waiver from the requirement that it use at least fifty percent of the funds received under section 59-21-420(a) from the State Board of Education (the "Board") for debt service on recently issued bonds, is the Board required to hear the request. In order to make this determination, we look to the rules of statutory interpretation. In considering the rules of statutory interpretation, we must keep in mind "[a]ll rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." McClanahan v. Richland County Council, 350 S.C. 433, 567 S.E.2d 240 (2002). "A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design,

and policy of lawmakers." Sloan v. South Carolina Bd. of Physical Therapy Examiners, 370 S.C. 452, 468, 636 S.E.2d 598, 606 (2006). "Words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation." Id. at 469, 636 S.E.2d at 607.

The portion of section 59-21-420 discussing a school district's ability to obtain a waiver from the Board neither states the Board must consider a request for a waiver submitted by a school district, nor does it state the Board has the option not to consider a request. Section 59-21-420(b) simply directs the Board to consult with the State Treasurer regarding the prevailing interest rates prior to granting a waiver. However, in providing this exception to the general rule that fifty percent of the funds supplied to the school district under section 59-21-420(a) must be used for debt service, we believe the Legislature intended for the Board at a minimum to consider a school district's request for a waiver. Moreover, as the United States Supreme Court noted in U.S. ex rel. Chicago Great Western R. Co. v. I.C.C., 294 U.S. 50, 60 (1935), when an administrative agency is afforded the power and jurisdiction to hear a matter, the agency has the duty to entertain the matter. From section 59-21-420(b), the Board clearly has the power and jurisdiction to make determinations on whether to grant a waiver. Accordingly, we believe it also has the duty to entertain the waiver.

The Board certainly has wide discretion as to whether to grant the waiver. Even if the school district has a beneficial rate as found by the State Treasurer, section 59-21-420(b) in stating the "State Board of Education may grant a waiver if the evidence is substantiated," affords the Board the option of refusing to grant the waiver despite the Treasurer's findings. (emphasis added). While we believe the Legislature afforded broad discretion to the Board as to whether to grant a waiver under this provision, we believe when the Legislature enacted this provision it envisioned the Board's consideration of each request for a waiver.

In your letter, you indicated the Board is under the assumption that it must hear each request received for its consideration. We do not find any indication under the statute that the Board must hold a hearing on every request. However, we do believe that the Board must consider each request and consult with the Treasurer regarding the prevailing interest rate in order to determine whether that particular school district is eligible for the waiver. However, we do not believe the Board must hold formal hearing on each request, although by doing so the Board may be in a better position to determine if the evidence warrants a waiver and whether the Board believes a waiver should be granted.

Conclusion

Based on our understanding of the Legislature's intent with regard to section 59-21-420 and in particular with regard to the Board's ability to grant a school district a waiver from the

requirement that at least fifty percent of the funding it receives from the State for renovations, capital improvements, and repairs to classrooms must be used to pay debt service on recently issued bonds, we believe the Legislature intended for the Board to consider each request received from a school district. While we believe a hearing would be helpful in the Board's consideration of each application for waiver, we do not believe a hearing is required.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Assistant Deputy Attorney General