ALAN WILSON
ATTORNEY GENERAL

May 20, 2011

James N. Epps, Jr., Ph.D.
Superintendent
Fort Mill School District 4 of York County
120 East Elliott Street
Fort Mill, SC 29715

Dear Dr. Epps:

You have requested advice of this office regarding a student in your school district who resides with her parents in an established residence, but who also owns property with a tax-assessed value of at least three hundred dollars located in a different school attendance zone within your school district. You question whether "the student must attend the school located in the attendance zone of her established residence, or could she attend the school in the other attendance zone if they agree to pay the required tuition?"

Law/Analysis

Chapter 63 of Title 59 of the South Carolina Code governs children attending public schools in South Carolina. Generally speaking, it is contemplated that pupils will attend school within the school district in which they reside. See Op. S.C. Atty. Gen., September 1, 1977.

Particular reference was made in your letter to S.C. Code Ann. §59-63-30. This provision presents the qualifications for a child to attend a public school in a particular school district. Section 59-63-30 states as follows:

> Children within the ages prescribed by §59-63-20 shall be entitled to attend the public schools of any school district, without charge, only if qualified under the following provisions of this section:
>
> (a) Such child resides with its parent or legal guardian;

(b) The parent or legal guardian, with whom the child resides, is a resident of such school district; or

(c) The child owns real estate in the district having an assessed value of three hundred dollars or more; and

(d) The child has maintained a satisfactory scholastic record in accordance with scholastic standards of achievement prescribed by the trustees pursuant to §59-19-90; and

(e) The child has not been guilty of infraction of the rules of conduct promulgated by the trustees of such school district pursuant to §59-19-90.

Also of relevance is §59-63-45 which states

(A) [n]otwithstanding the provisions of this chapter, a nonresident child otherwise meeting the enrollment requirements of this chapter may attend a school in a school district which he is otherwise qualified to attend if the person responsible for educating the child pays an amount equal to the prior year's local revenue per child raised by the millage levied for school district operations and debt service reduced by school taxes on real property owned by the child paid to the school district in which he is enrolled. The district may waive all or a portion of the payment required by this section.

(B) Students attending a school pursuant to this section must be counted in enrollment for purposes of determining state aid to the district.

(C) If the payment to the school district is not made within a reasonable time as determined by the district, the child must be removed from the school after notice is given.

(D) Any nonresident student enrolled in the schools of a district no later than September 9, 1996, shall not be required to meet the conditions of subsection (A) of this section as long as the student is continuously enrolled in the district and as long as the student meets the qualifications provided by law for attending the schools of the district.

Section 59-63-30 is a provision in the same chapter as §59-63-45. In an opinion dated September 7, 2010, we stated that, as set forth by such provision, a nonresident child may attend a school in a school district which he is otherwise qualified to attend if the parent ". . . pays an amount equal to the prior year's local revenue per child raised by the millage levied for school district operations and debt service reduced by school taxes on real property owned by the child paid to the school district in which he is enrolled." We advised that such requirement must be read in addition to the provisions of §59-63-30. See Op. S.C. Atty. Gen., dated December 8, 2005.

Referencing the above, we concluded in the September 7, 2010, opinion:

> . . . if a child owns real estate in his or her name in the amount of $300.00 in assessed value within a school district in which the child does not reside but wishes to transfer as authorized by Section 59-63-30(c) and complies with subsections (d) and (e) of the same section of the law, in the opinion of this office there is no requirement that the child obtain a release from the district of residence to transfer to the district of non-residence. Similarly, under the same provisions . . . , in the opinion of this office, the district of non-residence into which the child is to be transferred cannot deny the child's enrollment if the land requirement, scholastic achievement, good conduct, and payment of any required tuition are met.

See Ops. S.C. Atty. Gen., December 8, 2005; April 3, 1978; see also Op. S.C. Atty. Gen., July 8, 2009 [noting that "each child must hold in his or her name solely real estate having an assessed value of three hundred dollars or more . . . joint ownership would not qualify"]. [1]

Additionally, we note that §59-19-10 provides that each school district shall be under the management and control of the board of trustees, subject to the supervision of the county board of education. See Ops. S.C. Atty. Gen., January 29, 2007; February 16, 1983. Section 59-19-90,

---

[1]In addition to §59-63-30, §59-63-31 provides additional ways in which a child can qualify to attend a particular public school district based on the residence of an adult; if the child is emancipated and resides in the school district; if the child is homeless or is a child of a homeless individual; or if the child resides in an emergency shelter located in the school district. The Legislature has further recognized that, in certain instances, it is appropriate to provide for pupils residing in one county to attend schools in an adjacent county if such schools are closer (§59-63-480), or to attend schools in an adjacent district if the "person is so situated as to be better accommodated at the school of an adjoining school district (§59-63-490).

and in particular sub-part (9), provides the general powers and duties of the board of trustees as follows:

> (9) Transfer and assign pupils. Transfer any pupil from one school to another so as to promote the best interests of education, and determine the school within its district in which any pupil shall enroll . . .

In an opinion dated June 3, 1988, we specifically addressed the issue of whether a student who meets the eligibility requirements for attending public schools of a school district free of charge under §59-63-30 by owning real estate in the district having an assessed value of three hundred dollars or more has a right to attend any school in that district. We concluded that:

> Section 59-63-30 does not expressly address the question, but §59-19-90(9) empowers Boards of Trustees to '. . . determine the school within [the] district in which any pupil shall enroll . . . .' Giving §59-19-90(9) its plain meaning . . . requires the conclusion that the power of school districts to determine pupil assignments is not altered by the provisions of school attendance based upon property ownership under §59-63-30. Sutherland Statutory Construction, Vol. 2A §51.02; See also Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). Therefore, property ownership within a district does not, itself, entitle a student to demand attendance at a particular school within that district. [Emphasis added].

The reasoning of this opinion was reaffirmed in an opinion of this Office dated August 2, 1993.

We further note that in Redmond v. Lexington County School Dist. No. Four, 314 S.C. 431, 445 S.E.2d 441 (1994), the South Carolina Supreme Court held the standard of review in determining whether a Board properly exercised its discretion under §59-19-90 is whether the action measures up to any fair test of reason, and that a clear abuse of discretion is required to justify judicial interference. Id., 445 S.E.2d at 444 [citing Gamble v. Williamsburg County School District, 305 S.C. 288, 408 S.E.2d 217, 218 (1991)]. At issue in Redmond was whether the Board abused its discretion in entering into a lease-purchase agreement for building a new school, and to compel the making of repairs on existing schools. The Court held this was not an abuse of discretion and was within the Board's power under §59-19-90 to provide for the best interests of the district. Similarly, the South Carolina Court of Appeals stated in Singleton v. Horry County School District, 289 S.C. 223, 345 S.E.2d 751, 753 (Ct. App. 1986), that "[c]ourts will not interfere with the exercise of discretion by school boards in matters committed by law to their judgment unless there is clear evidence that the board has acted corruptly, in bad faith, or in clear abuse of its powers."

Conclusion

We again cite to our previous opinion, and we advise that property ownership within a district does not, in and of itself, entitle a student to demand attendance at a particular school within that district. Op. S.C. Atty. Gen., June 3, 1988. We conclude that, in the absence of any local legislation to the contrary, the determination of which school within the district a student meeting the eligibility requirements for attending public schools of a school district under §59-63-30 would attend is properly addressed to the discretion of the board of trustees of the school district pursuant to §59-19-90(9).[2] As we previously stated in Op. S.C. Atty. Gen., March 13, 1996, "boards of trustees of the school districts have broad powers over district affairs . . ." See Op. S.C. Atty. Gen., October 5, 1979.

If you have any further questions, please advise.

Very truly yours,

N. Mark Rapoport
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

[2]We note that Fort Mill School District 4 has issued "Policy JCA" concerning "Assignment of Students to Schools," which specifically addresses criteria for allowing transfers within the district.