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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

December 3, 2003

The Honorable Mike Fair
Senator, District No. 6
211 Gressette Senate Office Building
Columbia, South Carolina 29202

Dear Senator Fair:

In a letter to this office you questioned who is the code inspecting authority for certain new schools in Greenville County currently being built. According to your letter the schools are owned and are being constructed by Institutional Resources, a private entity.

A recently enacted provision of Act No. 87 of 2003 appears to control. Pursuant to a provision to be codified as Section 59-23-220,

All construction, improvements, and renovation of public school buildings and property must be inspected by the State Superintendent of Education or the superintendent's designee for compliance with the applicable codes and standards.

A certificate of approval must be obtained from the State Superintendent of Education or the superintendent's designee before a building may be occupied.

It is my understanding that the legislation was enacted primarily due to the recent situation involving Richland School District No. 1 and the plans for Dreher High School.

The primary goal of statutory construction is to ascertain the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). A statutory provision should be given a reasonable and practical construction consistent with the purpose and policy expressed in the legislation. Hay v. S.C. Tax Commission, 273 S.C. 269, 255 S.E.2d 837 (1979). A statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). When the terms of a particular statute are plain and unambiguous, the literal meaning should be applied. Duke Power Co. v. S.C. Tax Commission, 292 S.C. 64, 354 S.E.2d 902 (1987).

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The term "public school building" is not separately defined by Section 59-23-220. However, the requirements of such provision appear clear in mandating that all construction of a public school building be inspected by the State Superintendent of Education or her designee for compliance with relevant building codes and standards. No distinction is made as to a building owned by a private entity which may be considered a "public school building".

In determining the meaning of a statute, it is proper to consider other statutory provisions relating to the same subject matter. Southern Railway Co. v. S.C. Highway Dept., 237 S.C. 75, 115 S.E.2d 685 (1960). The construction of Section 59-23-220 as set forth above is consistent with S.C. Code Ann. Section 6-9-110 (Supp. 2002) which states that

(A) A county...or other local ordinance or regulation which requires the purchase or acquisition of a permit, license, or other device utilized to enforce any building standard does not apply to a:

(2) school district facility, permanent improvement project, construction project, renovation project, or property which is reviewed and approved by the State Department of Education; except that the State Department of Education or a local school district may direct that the local ordinance or regulation apply to a particular facility, project or property....

(emphasis added). Therefore, a county building standard is inapplicable to a school district facility reviewed by the State Department of Education unless the Department or local school district directs that the local ordinance or regulation apply.

At your suggestion, I contacted the Greenville County Attorney who had also reviewed this question. Section 6-9-110 was cited by him in an opinion dated November 5, 2003 that similarly concluded that as to the particular school building cited in your request letter, "...financing arrangements and actual ownership would not modify a school facility's exemption from local building standards." It was the conclusion of that opinion that State law prohibited Greenville County from imposing building code standards on public school construction. As explained in that opinion, the use and operation of a building as a public school appears to control a building's status as a school facility, not its ownership or financing arrangements.

A prior opinion of this office dated April 9, 2001 referenced Section 6-9-110 in dealing with the question of whether local inspection officials may have some role in inspecting a school district facility. The opinion commented that:

...because pursuant to Section 6-9-110(A), the school district facilities are exempt from certain local ordinances, the local building inspection officials may perform the inspection services as a courtesy, but cannot require the school facilities to acquire permits or licenses in compliance with local ordinances. Thus, a school district

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facility may request an inspection by the local inspection officials, and the local officials may perform the service, despite a facility's option not to comply with local building code requirements.

The opinion further stated that no statute "...prohibits local building inspection officials and school district facilities from entering into an agreement by which the local officials inspect the facility and report the findings to the facility for its own information."

Inasmuch as the facility addressed in your letter is being built by a private entity due to the current bonded indebtedness situation in Greenville County, cooperation between the State Department of Education and local building inspection officials would appear to be in order. While Section 59-23-220 does not speak to an exception for school buildings being built under such circumstances, input from local building inspection officials could certainly be sought as a courtesy in assuring compliance with all relevant building code requirements.

With kind regards, I am,

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General