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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

January 6, 2003

The Honorable Ronald P. Townsend
Chairman, Anderson County Legislative Delegation
Room 429, Blatt Building
Columbia, SC
By Delivery

Dear Representative Townsend:

As you asked, the previous informal opinion of December 20, 2002 that I sent you is being reissued as, follows, as a formal opinion of this Office.

You have requested an opinion regarding the State Board of Education's adoption of a uniform start date(s) for public schools. The provisions at issue read as follows:

S. C. Code Ann. §59-5-71 as added by Act 356 , Part I, §C, 2002 S.C. Acts 3826

"The General Assembly declares that it is in the best interest of the students of South Carolina for a uniform beginning date for the annual school term to be developed and adopted by the State Board of Education. . . . the State Board of Education is directed to establish a task force . . . [which] shall make recommendations to the board, including but not limited to, the desirability of and if agreed upon a suggested uniform beginning date for the annual school term. The task force shall report its findings to the State Board . . . no later than October 15, 2002."

Proviso 1.2 of the Appropriations Act for the Department of Education (Act 289, Part IB, §1-H63, Proviso 1.75):

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(SDE:School Start Study) The State Board of Education is directed to establish a task force . . . {which} shall make recommendations to the board including, but not limited to, a suggested uniform beginning date to the annual school term . . . The task force shall report its findings to the State Board . . . no later than January 1, 2003.

The End of Part I of Act 289 provides as follows:

All acts or parts of acts inconsistent with any of the provisions of Parts IA, or IB of this act are suspended for Fiscal Year 2002-2003. . .

You have asked whether §59-5-71 is controlling and if so, whether the State Board must establish the start date by regulation or whether it may do so by "simple policy statement/guideline." Further, you have asked whether local legislation may override the start date.

The initial question is whether Section 59-5-71 and the above task force proviso can be reconciled. "It is well-settled that statutes dealing with the same subject matter are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result." *Grant v. City of Folly Beach*, 346 S.C. 74, 79, 551 S.E.2d 229, 231 (2001). Both statutes authorize the State Board of Education to appoint a task force to study and receive recommendations regarding a start date, but only §59-5-71 states that ". . . it is in the best interest of the students of South Carolina for a uniform beginning date . . . to be developed and adopted by the State Board . . ." The Board's adoption of a start date would be a significant step for the Board beyond merely receiving the recommendation of the Task Force; however, the directions in Act 356 are not explicit as to Board action. The General Assembly merely declared in §59-5-70 that the best interests of students would be served by the establishment of a start date, but its only express command is for the Board to establish a task force. Although a conclusion could be reached that the codification of §59-5-70 was a direction to the Board to go forward with the matter, some might argue differently because of the absence of an express command to set a date and the absence of any such authority in the proviso..

That the legislature did not command Board action may have significance as to the above suspension provision in the Appropriations Act. Although Act 356, which contains §59-5-70 was passed subsequently to the Appropriations Act, the absence of this express command may convey an intent of the General Assembly for the Board not to set a start date until after the fiscal year had ended and the legislature had the opportunity to address the matter further. In other words, the General Assembly intended for the suspension provision to be operative as to §59-5-70. Therefore, construing all of the provisions together (*Grant, supra*) indicates a legislative intent that the State Board may not set a start date until, at least, the fiscal year has ended and the legislature has had the opportunity to address the matter.

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Legislative clarification may be the best way of resolving any further questions about these laws. Furthermore, the legislature could provide for local law exemptions to any uniform start date(s) established by the State Board or the General Assembly. As the Supreme Court has noted, "[c]reation of different provisions for school districts does not impinge upon the 'Home Rule' Amendment because public education is not the duties of the counties, but of the General Assembly." *Moye v. Caughman*, 265 S.C. 140, 217 S.E.2d 36 (1975); *Ops. Atty. Gen.* (June 13, 2002).

Any further action by the General Assembly could also address the question of whether the State Board may adopt a start date without promulgating a regulation. Although the General Assembly's addressing both the study of and establishment of the start date in that statute might suggest a legislative intent for that process to occur outside the provisions for the promulgation of regulations (*see* §§1-23-10 and 1-23-110 (Supp. 2001)), the absence of a command for the Board to set a date and the absence of an express exemption from the promulgation requirements could lead to a conclusion that a regulation would have to be adopted.

In summary, any of authority of the State Board to adopt a uniform start date(s) in §59-5-70 appears to be suspended for the current fiscal year. Legislative clarification may be desirable to resolve any further question regarding the operation of these laws. Certainly, the legislature may also exempt any local school districts from a uniform start date.

If you have further questions, please let me know.

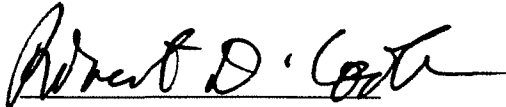
Yours very truly,



J. Emory Smith, Jr.

Assistant Deputy Attorney General

Reviewed and approved by:



Robert D. Cook
Assistant Deputy Attorney General