

The State of South Carolina



Office of the Attorney General

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November 17, 1993

The Honorable Phil P. Leventis
Senator, Sumter County
404 Gressette Building
Columbia, SC 29202

Dear Senator Leventis:

You have requested the opinion of this Office as to the meaning of Proviso 20.35, of Act 164, Part I, 1993 S.C. Acts 827. The Proviso reads as follows:

Notwithstanding any other provision of law, the board of trustees of any school district which does not have the authority by any special act of the General Assembly to charge matriculation and incidental fees is authorized to charge a fee to offset the cost of education materials and supplies with the consent of the majority of the legislative delegation representing the school district. The board of trustees of each school district which charges such fees is directed to develop rules and regulations for such fees which take into account the students' ability to pay and to hold the fee to a minimum reasonable amount. Fees may not be charged to students eligible for free lunch and must be pro rata for students eligible for reduced price lunches, if charged at all. (Emphasis added).

As you have noted, Sumter County School District No. 17 previously had authority to charge "matriculation and other incidental fees" under Act 376, 1977 S.C. Acts 1012. This 1977 law referenced the statute now codified as S.C. Code Ann. § 59-19-90 (8) (1990) which authorizes such fees when allowed by any special act of the General Assembly. Neither the 1977 law nor § 59-19-90 (8) place any limitations on fees charged which are specific to free or reduced price lunch students.

I assume that one of your questions is how Proviso 20.35 relates to the earlier laws. In statutory construction, the intent of the Legislature is what is controlling, and more specific and more recent legislation tends to be controlling with respect to earlier more general legislation. See Yahnis Coastal, Inc. v. Stroh Brewery, 295 S.C. 243, 368 S.E.2d 64 (1988); Spartanburg Sanitary

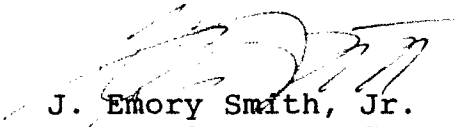
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Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984); and Criterion Insurance Co. v. Hoffman, 258 S.C. 282, 188 S.E.2d 459 (1972). Applying these rules here indicates that Proviso 20.35 would be controlling with respect to § 59-19-90 (8) and the 1977 legislation for Sumter. Although the introductory sentence to the proviso references only school districts that currently do not have authority by special act to charge such fees, the second and third sentences appear to apply to all districts. The proviso indicates no intent to require only some districts to exempt free lunch students from fees. Therefore, a "reasonable and practical construction consistent with the purpose and policy expressed in the statute" is that all districts must follow the proviso's restrictions on fees for free and reduced price lunch students. See First South Savings Bank v. Gold Coast Associates, 301 S.C. 158, 390 S.E.2d 863 (1990).

Your letter also indicates that questions have been raised concerning the validity of charging such fees. In response to this question, I am enclosing copies of three previous opinions of this Office which address the validity of fees for certain educational costs. Ops. Att'y Gen. September 22, 1982; June 28, 1978; and August 18, 1975. These opinions should be applicable here.

I hope that this letter addresses the questions that you had. If you need other information, please let me know.

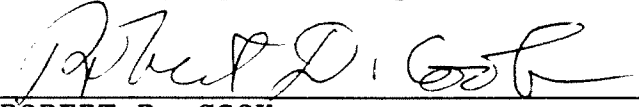
Yours very truly,


J. Emory Smith, Jr.
Deputy Attorney General

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