

The State of South Carolina

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Attorney General

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October 7, 1993

The Honorable Darrell Jackson
Senator, District No. 21
2936 Dell Drive
Columbia, South Carolina 29209

Dear Senator Jackson:

You have requested an opinion from this Office concerning whether the State Department of Education has the authority to bar for life an applicant for a professional trade and industry certificate from taking the Education Entrance Examination ("EEE") because such applicant did not earn a passing score on the EEE during the five year period in which he held a provisional trade and industry credential. S.C. Code Ann. § 59-26-40, which is part of Act 187 adopted by the General Assembly in 1979, provides that a school district may employ a trade and industry teacher, who has not passed the EEE, under an annual contract for five years. A previous opinion of this Office, dated August 17, 1982, authorized such a trade and industry teacher to take the EEE on as many occasions as is offered during this five year period. Neither the statute nor the prior opinion of this Office addressed the right of an applicant to take the EEE after the provisional credential expired or was suspended.

This issue has been addressed, however, in regulations formally adopted by the State Board of Education on May 28, 1993. These regulations, found at 43-63, provide that "[a]pplicants who do not complete the requirements for a professional certificate during the five years of provisional certification shall meet all certification requirements for a professional certificate in effect at such time as they qualify." Section VI(c). The regulations further provide that should a teacher fail to meet the requirement for a continuing contract, which includes the failure to pass the EEE within five years, the State Board "shall suspend their credential until such time as the teacher shall meet the conditions for employment as prescribed in § 59-26-40 of the South Carolina Code of Laws, 1976." Section XII(5). Clearly, these recently adopted regulations anticipate that a person whose provisional certificate is suspended because of an inability to pass the EEE

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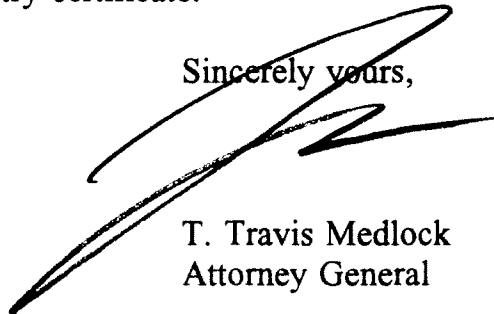
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may continue to pursue certification so long as he meets the then existing requirements for professional certification.

Moreover, it is noteworthy that this presumed lifetime ban on taking the EEE, and thus on earning a professional trade and industry credential, is not authorized or referenced in any statutory or regulatory provision. Other provisions of Act 187, which limit the number of times the EEE may be taken by students entering a teacher education program at a South Carolina college and the opportunity for a non-renewed annual or provisional contract teacher to reenter the profession, explicitly and unambiguously state such limitations. See, § 59-26-20(e)(2) and § 59-26-40, Paragraph 6.¹ The inferring of the authority to bar for life a person from earning a credential to teach in South Carolina, without an explicit statutory provision, is dubious under the most favorable of circumstances and is made even more so by the recently adopted regulations which anticipate certification after the passage of the five year provisional credential period.

Therefore, it is the opinion of this Office that the State Department of Education does not have the legal authority to bar an applicant from taking the EEE who previously did not pass the EEE while holding a provisional trade and industry credential. Moreover, if such applicant should thereafter earn a passing score on the EEE and satisfy all of the then existing criteria for certification, such applicant is eligible for the issuance of a professional trade and industry certificate.

Sincerely yours,



T. Travis Medlock
Attorney General

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¹ § 59-26-20(e)(2) was amended by a proviso in the 1993 Appropriations Act to allow students in teacher education programs to retake the test after three unsuccessful attempts upon completion of a post-secondary course of study in areas of deficiency. This modified limitation on retaking the EEE for persons seeking to enter a teacher education program is also explicitly and unambiguously stated in the statutory provision.