

## The State of South Carolina



## Office of the Attorney General

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September 19, 1994

The Honorable Barbara Stock Nielsen, Ed.D.  
State Superintendent of Education  
Department of Education  
Rutledge Building, Room 1006  
1429 Senate Street  
Columbia, SC 29201

Dear Superintendent Nielsen:

You have requested the opinion of this Office as to Act 164, Part I, § 20.28, 1993 S.C. Acts 826, which states, in part, as follows:

Once a district has expended all state allocated funds for fringe benefits, the district may utilize food services revenues to fund a proportionate share of fringe benefits costs for food service personnel.

Your question concerning this provision, which is contained in the Department of Education's section of the Appropriations Act, is whether the Department has reasonably interpreted this proviso.

The Department's interpretation, according to your letter, is that the food services revenues may be used only to fund any shortfall in State revenue for fringe benefits which is proportionate to the percentage of food services employees out of total district employment. According to your letter, the State typically pays approximately 70% of the total fringe benefits which leaves a 30% shortfall which must be covered by the school districts. Under the Department's interpretation of Proviso 20.28, if food services personnel covered by § 20.28 accounted for 10% of a district's total fringe benefit expenditures, the district could use food services revenues to fund 10% of the 30% shortfall for all covered employees.

The following standard of review is controlling here:

*Request Letter*

The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons. Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987).

Applying this standard to the Department's interpretation indicates that it would be upheld by a court because no compelling reasons appear to exist to overrule it. The express language of § 20.28 does not state how the "proportionate share" must be determined, but the Department's interpretation is consistent with a reasonable reading of the language of Proviso 20.28. The State funds allocated under that provision must be used for "personnel required by the defined minimum program, food services personnel and other personnel required by law." Therefore, the Department has certainly not acted unreasonably in assuming that a district would have allocated State funds to all of these personnel in the same proportions so that if State funds covered 70% of fringe benefit costs, 70% of the fringe benefits costs for food services personnel would have been covered by State Funds as would the defined minimum employees and others. Therefore, the shortfall for food services personnel would be 30%. Accordingly, if food services employees were 10% of the work force, food services funds could be used only to cover 10% of that total 30% shortfall. Section 20.28 limits the fringe benefit use of food services revenue to food service personnel.

According to your letter, a school district has interpreted § 20.28 so as to have the effect of allowing a district to use the State funds allocated by § 20.28 for non-food service personnel and use the food services money to fund the State's approximately 70% share fringe benefit costs for food services personnel. Section 20.28 indicates no such legislative intent. Spartanburg Cemetery Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984).<sup>1</sup> If the Legislature had intended that food services revenues would be used to fund the 70% share for those employees, it could have stated that the State allocation in § 20.28 would be used entirely for non-food services. The law does not contain that language nor does it indicate such intent.

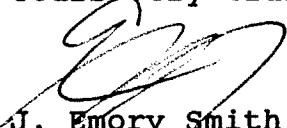
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<sup>1</sup> Legislative intent is the dominant factor in the construction of statutes. Id.

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The opinion of this Office is that the Department of Education has reasonably interpreted § 20.28 and that no compelling reason appears to exist that would cause a court to overturn the Department's findings. If you have any questions, please let me know.

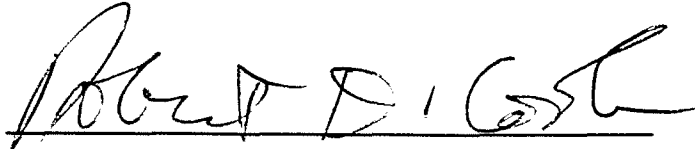
Yours very truly,



J. Emory Smith, Jr.  
Deputy Attorney General

JESjr:ppw

REVIEWED AND APPROVED BY:



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