

The State of South Carolina



T. Travis Medlock
Attorney General

803-734-3970
Columbia 29211-1549

Attorney General

September 22, 1994

The Honorable Becky Meacham
Member, House of Representatives
2161 Windy Oaks Drive
Fort Mill, SC 29715

Dear Representative Meacham:

You have requested the opinion of this Office as to whether a school district has any discretion as to compliance with the following statute passed by the legislature this year: "All schools shall provide for a minute of mandatory silence at the beginning of each school day." Act No. 497, Part I, § 19.83, 1994 S.C. Acts 424. For the reasons set forth below, this statute is mandatory, and a school district must comply with it.

First, I note, that this law clearly appears to be constitutional as written under the First Amendment of the United States Constitution. This Office has previously concluded that a minute of silence bill which was subsequently not passed by the Legislature appeared to be constitutional as written. Ops. Att'y Gen. April 11, 1988 (copy attached). Certainly, this legislation is also entitled to a heavy presumption of constitutionality, and a court would not overturn it unless its repugnance to the Constitution is clear and beyond a reasonable doubt. Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986); Robinson v. Richland County Council, 293 S.C. 27, 358 S.E.2d 392 (1987).

The following rules of statutory construction apply here:

In interpreting any legislative act, the primary objective is to ascertain and effectuate legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words used in a statute are to be given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). When language of a statute is plain and unambiguous, it is to be applied literally. State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982). Use of the word "shall" in a statute generally connotes mandatory compliance. S.C. Dept. of Highways and Public Transp. v. Dickinson, 288 S.C. 189, 341 S.E.2d 134

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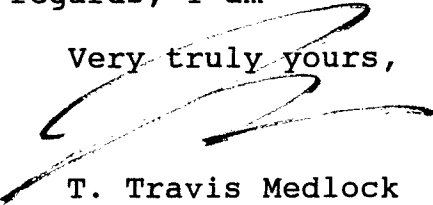
(1986). Provisos must be strictly construed. Barringer v. Dinkler Hotels Co., 61 F.2d 82 (4th Cir. 1932); 2A Sutherland, Statutory Construction, § 47.08. See Ops. Att'y Gen. No. 93-16 (March 15, 1993).

Under these principles of statutory construction, § 19.83 is mandatory due to its use of the word "shall" and the absence of language indicating any discretion of school districts to comply with this law. "Generally, a mandatory provision must be strictly complied with and there is no discretion in the agency or public official." Muskego-Norway Consolidated Schools v. Wisconsin Employment Relations Board, 32 Wis.2d 478, 145 N.W.2d 680, 683 (1966). Accordingly, every school district in the State of South Carolina must follow § 19.83, and the districts have no discretion not to comply.

If you have other questions, please let me know.

With kindest personal regards, I am

Very truly yours,



T. Travis Medlock
Attorney General

TTM:ppw
Attachment