

The State of South Carolina



Office of the Attorney General

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February 8, 1995

Gary Smith, Ed.D.
Superintendent of Horry County
School District
1600 9th Avenue
Conway, SC 29526

Re: Informal Opinion

Dear Dr. Smith:

You have requested the Opinion of this Office as to whether a school district may provide its own "cafeteria" plan for employee benefits under the following circumstances:

1. The Plan is in addition to the plan provided by the South Carolina System (State Plan).
2. The Plan offers different benefit programs than the State Plan.
3. The Plan does not compete with the State health insurance plan set forth in S.C. Code Ann. § 1-11-710 (Supp. 1993).

As you recognize in your letter, this Office has previously issued an opinion on a similar question. Ops. Atty. Gen., Oct. 7, 1987. That opinion interpreted S.C. Code Ann. § 9-1-60, as added by Act. 170, Part II, § 18, 1987 Acts 1930 as providing "...that the only cafeteria plan in which school districts may participate is the one offered by the Retirement System."

We have carefully reviewed § 9-1-60, a subsequent amendment thereto (Supp. 1993), and the above prior Opinion. That Opinion,

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unless overruled, would preclude the operation by a school district of a cafeteria plan under the circumstances set forth in your letter. This Office continues to be guided by a prior Opinion unless the prior Opinion "is clearly erroneous or the applicable law has changed." Ops. Atty. Gen. Oct. 3, 1986. After reviewing this matter, we cannot conclude that the 1987 Opinion is clearly erroneous nor has applicable law changed in a way that would alter the conclusion of the 1987 Opinion. In particular, a 1993 amendment to § 9-1-60 authorizes the former Department of Highways and Public Transportation to continue with its independent cafeteria plan "until such time as the Comptroller General can convert Department of Transportation employees into the State cafeteria plan." This amendment is consistent with the conclusion of the 1987 opinion that the only cafeteria plan in which school districts may participate is the Retirement System plan because school districts fall under the same plan to which Transportation employees are being converted.

If you have any questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.
Deputy Attorney General

JESjr:pb