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OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 31, 1996

Dr. Michael B. McCall, Executive Director
State Board for Technical and Comprehensive Education
111 Executive Center Drive
Columbia, South Carolina 29210

RE: Informal Opinion

Dear Dr. McCall:

By your letter of January 23, 1996, to Attorney General Condon, you have sought an opinion concerning what information requests, if any, can be denied by a Technical College President or Area Commission in responding to the Executive Director of the State Board for Technical and Comprehensive Education ("State Board") or the State Board Chairman, representing the State Board. The question arises due to a recent conflict in obtaining copies of written reports from one of the Technical Colleges.

The relationship of the State Board to the local technical colleges or area commissions governing the local technical colleges is statutorily created; thus, it is helpful to look first at those statutes, which are codified primarily as Chapter 53 of Title 59, S.C. Code Ann. (1976, revised 1990 & 1995 Cum. Supp.).¹ In particular, §59-53-20 provides in relevant part:

The State Board for Technical and Comprehensive Education shall have within its jurisdiction, in accordance with the provisions of this article,

¹There may be other statutes throughout the Code of Laws which add to the relationship of the State Board to the local technical colleges. Those statutes, if any, are not addressed in this informal opinion.

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all state-supported technical institutions and their programs that are presently operating and any created in the future.

The State Board for Technical and Comprehensive Education shall have approval or disapproval authority over all post-secondary vocational, technical, and occupational diploma and associate degree programs financed in whole or in part by the State that lead directly to employment. ...

....

The State Board for Technical and Comprehensive Education shall have the responsibility for developing and maintaining short and long-range plans for providing up-to-date and appropriate occupational and technical training for adults and shall coordinate its planning activities with the Economic Development Coordinating Council, the State Council on Vocational-Technical Education, the Commission on Higher Education, the State Department of Education, the Employment Security Commission, and other state agencies, institutions, and departments.

All personnel employed in the institutions and programs within the jurisdiction and control of the State Board for Technical and Comprehensive Education are designated state employees whether paid in whole or in part by state funds and are subject to the regulations, guidelines, and policies of the State Board for Technical and Comprehensive Education, the Budget and Control Board, and the state personnel system. ...

Powers and duties of the State Board are enumerated in §59-53-50 and include such activities or responsibilities as the "state-level development, implementation, coordination, and operation of an adequate and high quality post-high school vocational, technical, and occupational diploma and associate degree courses, programs, and adult short-term training programs and courses;" establishing the criteria for issuance of diplomas and certificates for students who complete courses or programs; accepting and administering donations, funds, and the like; requiring accountability for inventory of equipment, real property, and the like; establishment of criteria for the justification of new facilities or modification of existing facilities; filing annual reports on its activities and appropriate recommendations with the Governor and General Assembly; and others.

As to the formulation of policies and procedures, §59-53-51 provides more specifically that the State Board

shall establish statewide policies and procedures necessary to insure educational and financial accountability for operation of the technical education institutions and their programs.

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The area commissions shall participate and provide input in the formulation of statewide policies and procedures through joint meetings, distribution of discussion documents and position papers, joint committees, service by area commission members on state board standing committees, and whatever other means which may be necessary or desirable.

The area commissions are delegated primary responsibility for local governance and supervision of the individual institutions in compliance with all state laws by adoption of appropriate local policies and procedures which are consistent with state-level policies and procedures. ...

It is observed that the State Board is to establish statewide policies and procedures, with input from the area commissions, relative to educational and financial accountability. Thus, uniformity statewide with respect to such accountability is expected. While the area commissions are to have primary responsibility for local governance and supervision of their individual institutions, such is not denominated exclusive by the statute. It is apparent that the General Assembly anticipated that the local technical colleges, through their area commissions, would be accountable in various respects to the State Board.

By Op. Att'y Gen. dated September 6, 1983, this Office examined the authority of and the relationship between the State Board and the area commissions for the local technical colleges. It was observed therein that the general legislative provisions relative to the State Board and the area commissions, as well as special legislation relative to the various area commissions,² do not clearly define all points where state level control ends and local control begins. The opinion cited to §59-53-20, supra, as to the jurisdiction of the State Board over all state supported technical institutions and their programs and the specification that all courses, programs, and institutions within its jurisdiction be identified and administered as the South Carolina technical education system. The term "jurisdiction" is defined as "the right to say and the power to act; and, as between agencies of government, jurisdiction is the power of that particular agency to administer and enforce the law." Carroll Vocational Institute v. United States, 211 F.2d 539, 540 (5th Cir. 1954); General Trades School, Inc. v. United States, 212 F.2d 656 (8th Cir. 1954). As observed in the opinion, the use of the term "jurisdiction" in §59-53-20 demonstrates that the State Board has powers of administration and enforcement over the technical education system; the conclusion is supported by the use of the term "control" in conjunction with

²The various special acts relative to each of the local technical colleges have not been examined in preparation of this informal opinion; as stated in the opinion of September 6, 1983, such a task would be beyond the scope of this opinion.

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"jurisdiction" and the statutory grant of authority to the State Board set forth in the relevant statutes.

The opinion continues, stating that although the area commissions have been granted the powers of local governance, the powers of the area commissions cannot be exercised in violation of appropriate State Board policy. Local policies and procedures must be consistent with the policies and procedures of the State Board. One prime example as observed in the opinion is that of the area of personnel: while the area commissions have the power to employ personnel, those personnel are nevertheless state employees and subject to the rules and regulations of the State Board, the Budget and Control Board, and the state personnel system.

The opinion also emphasizes accountability:

A very broad power given to the State Board which could affect monetary matters is the authority to "...establish statewide policies and procedures necessary to insure educational and financial accountability for operation of the technical education institutions and their programs." §59-53-51 [Emphasis added]. Accountability has been defined as the "state of being responsible or answerable." Black's Law Dictionary (5th Ed. 1980). Thus, a reasonable reading of this somewhat vague grant of authority is that the Board may use it to ensure that the expenditures and policies of the area commissions are consistent with properly applicable State Board policies and state or federal law. Because the State Board's responsibility includes the state level development and operation of high quality programs financed in whole or in part by state funds, the accountability powers should extend to the State Board's adoption of policies that assure that the area commissions fulfill their responsibility to maintain those high quality standards at their respective institutions. §59-53-50(1).

Considering the applicable statutes and using the prior opinion as a point of departure, I am of the opinion that the State Board of Technical and Comprehensive Education has broad authority to request of the area commissions information, documents, reports, or the like which will enable the State Board to carry out its mission of jurisdiction and oversight of the local technical colleges and to ensure the necessary accountability of the technical colleges and their area commissions by the State Board. It is not possible, however, to provide a comprehensive list of all documents or information which might be sought by the State Board or by you as Executive Director, which documents or information should then be forwarded by the area commissions to the State Board; if the request is related to the mission of the State Board, as stated in the

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above statutes, then such information should be provided to the State Board by the area commissions.

While of course the State Board for Technical and Comprehensive Education is a state agency and not a corporation in the truest sense of the word, analogizing the State Board to a corporation and thus to law applicable to corporations is helpful. In the broadest sense of the word, a state agency is a corporation. See People ex rel. Board of Trustees of University of Illinois v. Barrett, 46 N.E.2d 951 (Ill. 1943). Moreover, where state agencies are given the same rights as a corporation, courts have applied the same rules concerning corporations to state entities. Department of Highways v. Lykes Bros. S.S. Co., 209 La. 381, 24 So.2d 623 (1945); see also Hays v. Louisiana Wildlife and Fisheries Comm'n, 165 So.2d 556 (La. 1964); Kinsey Const. Co. v. S.C. Department of Mental Health, 272 S.C. 168, 174, 249 S.E.2d 900 (1978). Here, the relevant statutes do not specify that the State Board is a corporation, but the enabling legislation gives the State Board a number of powers given to a corporation and its board. Among them are, in §59-53-52, the power or authority to adopt and use a corporate seal; to adopt bylaws, rules, and regulations for the conduct of business and expenditure of funds; to accept gifts, donations, bequests, and the like; to employ the institutional chief administrative officer and employ other personnel; and to exercise other, similar corporate powers. The area commissions, as a part of the overall structure of the technical and comprehensive education, would fall within the corporate structure, under the State Board.

With respect to corporations and the overall management by the duly selected board of directors (here analogous to the State Board, its members and Executive Director), the law is well-settled. It has been stated that

[i]t is the general rule, from which there appears to be no dissent, that a director of a corporation has a right, by reason of his official relation to the company, to inspect the books and papers thereof. This proposition would seem to be self-evident. A director directs, guides, and manages. Accordingly, it is necessary that he have all the information in regard to the affairs of his company that he can obtain in order that he may direct its operations intelligently and according to his best judgment... .

18A Am.Jur.2d Corporations §361. Moreover, this right is given to each individual director:

Each director has the right to inspect the books, records, and documents of the corporation, irrespective of his motive; but subject to fiduciary obligations not to wrongfully use or disseminate them, as such

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right is correlative with his duty to protect and preserve the corporation. However, the mere possibility of abuse or misuse of the right does not afford any ground for its denial or restriction.

A director's right to inspection has been held absolute and unqualified, barring a claim of circumstances that his action is inimical to the interests of the corporation... .

A presumption exists that inspection of books and records by a director is made in good faith and with honesty of purpose, and all that he need show to entitle him to an inspection is that he is a director of the company, that he has demanded permission to examine and that his demand has been refused; and by making such showing he makes out a prima facie case as to his right of inspection. The burden then shifts to the corporation to show why the director should not be permitted to exercise his rights or that the exercise should be conditioned.

19 C.J.S. Corporations §506. See also Henn, Corporations §216.

By analogy, I believe that the State Board, its members, and the Executive Director, like the members of a corporation's governing board of directors, must "have all the information in regard to the affairs of the [agency] ... that [they] can obtain in order that [they] may direct its operations intelligently and according to [their] best judgment... ." See 18 Am.Jur.2d Corporations §183. As members of the State Board and its Executive Director, these individuals are public officers and trustees of the public; and as part of that public trust, they must exercise the duties of their office to the best of their ability. 63 Am.Jur.2d Public Officers and Employees §§ 275, 282.

In conclusion and based on the foregoing, I am of the opinion that the State Board of Technical and Comprehensive Education, the members of the Board, and its Executive Director has broad authority to request of the area commissions whatever information, documents, reports, or the like which will enable the State Board to carry out its mission of jurisdiction and oversight of the local technical colleges and their area commissions in the provision of technical and comprehensive education. By analogy as stated with respect to corporate law, should an area commission decide not to provide requested information, the area commission would most probably have the burden of showing why the State Board would not have the right to receive the information sought. While an all-encompassing list of documents, materials, or information, which information should be submitted at the request of the State Board, cannot be compiled, I am of the opinion that if the requested documents, materials, or information relates to the mission of the State Board, then the requested documents, materials, or information should be provided to the State Board by the area commissions.

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This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General