



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

June 4, 1997

Albert C. Byrd, CPCU
Manger, Property-Casualty Department
South Carolina Insurance Reserve Fund
Post Office Box 11066
Columbia, South Carolina 29201

Re: Informal Opinion

Dear Mr. Byrd:

You have asked our opinion as to a charter school's eligibility to purchase insurance coverage through the Insurance Reserve Fund. You have attached a memorandum from Bruce Davis, legal counsel for the Lighthouse Charter School, located at Hilton Head. Mr. Davis' letter points out that the Charter Schools Act of 1996, codified at S.C. Code Ann. Section 59-40-50(B)(4), provides as follows:

[a] charter school shall be considered a school district for purposes of tort liability under South Carolina law, except that the tort immunity shall not include acts of intentional or wilful racial discrimination by the governing body or employees of the charter school. Employees of charter schools shall be relieved of personal liability for any tort or contract related to their school to the same extent that employees of traditional public school districts in their school district are relieved.

LAW / ANALYSIS

S.C. Code Ann. Sec. 1-11-140 provides the authority for tort liability insurance for the State, its political subdivisions and their officers and employees. Such Section provides in pertinent part:

(A) [t]he State Budget and Control Board, through the Office of Insurance Services, is authorized to provide insurance for the State, its departments, agencies, institutions, commissions, boards, and the personnel employed by the State in its departments, agencies, institutions, commissions, and boards so as to protect the State against tort liability and to protect these personnel against tort liability arising in the course of their employment.

(B) Any political subdivision of the State including, without limitations, municipalities, counties, and school districts, may procure the insurance for itself and for its employees in the same manner provided for the procurement of this insurance for the State, its entities, and its employees.

(C) The procurement of tort liability insurance in the manner provided is the exclusive means for the procurement of this insurance.

Also relevant is the South Carolina Tort Claims Act, Section 15-78-10 et seq. which makes a governmental entity and its members liable in tort only as authorized therein. Such statute defines a "governmental entity" for purposes of the Tort Claims Act as meaning "the State and its political subdivisions." Section 15-78-30(d). The "State" is defined in the Act to include

the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

Our Supreme Court has held that while it is the Budget and Control Board's duty, pursuant to Section 15-78-140(a), to insure against risks waived under the Tort Claims Act, this duty is not exclusive. In Town of Duncan v. State Budget and Control Board, ___ S.C. ___, 482 S.E.2d 768 (1996), the Court reasoned that, because Section 1-11-140 (A) does not specifically mention the Tort Claims Act, the Board could insure against other torts not covered pursuant to the Tort Claims Act. Clearly, however, the Tort Claims Act and Section 1-11-140 are interrelated and both statutes should be looked to for guidance.

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In Sanders v. Am. Southern Insurance Co., ___ S.C. ___, the Court commented as follows regarding the function of the Insurance Reserve Fund:

[t]he IRF was created to provide insurance to the State of South Carolina and its political subdivisions, departments, agencies, commissions, board and employees. This function is carried out on a non-profit basis "so as to protect the State against tort liability and to protect personnel against tort liability arising in the course of employment." S.C. Code Ann. § 1-11-140 (Supp. 1995). As required by statute, this is the sole means of insurance for these governmental bodies and all vehicles owned by the Governor's Office. South Carolina Code Ann. § 10-7-120 (1986) expressly authorizes the Budget and Control Board through the IRF to reinsure any portion of insurance liability established pursuant to §1-1-140. (emphasis added).

With that background, we turn now to the South Carolina Charter Schools Act of 1996 to determine the nature of a charter school so as to ascertain whether such an entity would qualify for IRF coverage pursuant to the foregoing statutory authority.

The South Carolina Charter Schools Act of 1996 is found at S.C. Code Ann. Sec. 59-40-10 et seq. Section 59-40-30 provides that "[i]n authorizing charter schools, it is the intent of the General Assembly to create a legitimate avenue for parents, teachers and community members to take responsible risks and create new, innovative, and more flexible ways of educating all children within the public school system." Furthermore, this Section states that

[t]he General Assembly seeks to create an atmosphere in South Carolina's public school systems where research and development in producing different learning opportunities is actively pursued, and whose classroom teachers are given the flexibility to innovate and the responsibility to be accountable. As such, the provisions of the chapter should be interpreted liberally to support the findings and goals of this chapter and to advance a renewed commitment by the State of South Carolina to the mission, goals and diversity of public education.

(emphasis added). Section 59-40-40 defines in considerable detail and with precise specificity the nature of a charter school and its relationship to other public schools in South Carolina. A "charter school" is defined by Section 59-40-40(1) as a

... public, nonsectarian, nonreligious, nonhome-based, nonprofit corporation forming a school which operates within a public school district, but is accountable to the local school board trustees of that district, which grants its charter. (emphasis added).

Subsection (2), moreover, reemphasizes that a charter school, while a nonprofit entity, is legally part of the school district:

(2) [a] charter school:

(a) is considered a public school and part of the school district in which it is located for purposes of state law and the state constitution;

(b) is subject to all federal and state laws, and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, gender, national origin, religion, ancestry, or need for special education services;

(c) must be administered and governed by a governing body in a manner agreed to by the charter school applicant and the sponsor, the governing body to be selected in the manner provided in Sections 59-40-50(B)(8);

(d) shall not charge tuition or other charges of any kind except as may be allowed by the sponsor.

An "applicant" is defined by Subsection (3) of § 59-40-40 as "the person who desires to form a charter school and who files the necessary application therefor with the local school board of trustees."

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In addition, and perhaps most importantly, Section 59-40-50(B)(4) provides that a charter school shall "be considered a school district for purposes of tort liability under South Carolina law, except that the tort immunity shall not include acts of intentional or wilful racial discrimination by the governing body or employees of the charter school. Employees of charter schools shall be relieved of personal liability for any tort or contract related to their school to the same extent that employees of traditional public schools in their school district are relieved."

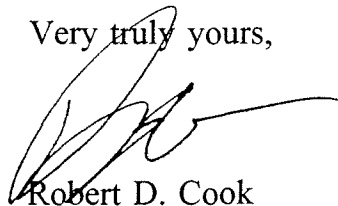
Thus, it is evident that the General Assembly intended that a charter school would be "a public school and part of the school district in which it is located for purposes of state law and the state constitution ..." and would be "a school district for purposes of tort liability under South Carolina law" That being the case, it is my opinion that the charter school in question, as well as other charter schools, would be eligible for IRF coverage. As noted, "[a]ny political subdivision of the State, including, without limitations, municipalities, counties and school districts, may procure the insurance for itself and for its employees in the same manner provided for the procurement of this insurance for the State, its entities and employees." A charter school possesses its own governing board, see, § 59-40-40(7), and thus acts automatically for the purpose of such things as procuring insurance.

For the same reason, a charter school would be considered a "governmental entity" for purposes of the Tort Claims Act. A school district is a political subdivision in South Carolina. Thus, I agree with Mr. Davis' letter that the Lighthouse Charter School is eligible for the purchase of IRF coverage pursuant to Section 1-11-140 of the Code as well as other provisions of law referenced herein.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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 kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/ph