



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 23, 1997

The Honorable Barbara Stock Nielsen
State Superintendent of Education
State Department of Education
1429 Senate Street
Columbia, SC 29201

Re: Informal Opinion

Dear Dr. Nielsen:

You have today requested the advice of this Office regarding Proviso 19.11 of the Appropriations Act. Act 155, Part 1B, 1997 S.C. Acts _____. Proviso 19.11 reads as follows:

(Fees - Incidental & Matriculation) Notwithstanding any other provision of law, the board of trustees of any school district which does not have the authority by any special act of the General Assembly to charge the cost of educational materials and supplies is authorized to charge a fee to offset the cost of educational materials and supplies. The board of trustees of each school district which charges such fees is directed to develop rules and regulations for such fees which take into account the students' ability to pay and to hold the fee to a minimum reasonable amount. Fees may not be charged to students eligible for free lunch and must be pro rata for students eligible for reduced price lunches, if the parents or guardians of these students so request. (emphasis added).

Specifically, you have asked whether the last sentence of this proviso providing exemptions for students receiving free and reduced price lunches applies to all school districts or only to those districts which have not previously had statutory authority to charge matriculation and incidental fees. Under S.C. Code Ann. §59-19-90 (8) (1990), school districts have been authorized to charge such fees when authorized by any special act of the General Assembly.

Request Letter

The Honorable Barbara Stock Nielsen
September 23, 1997
Page 2

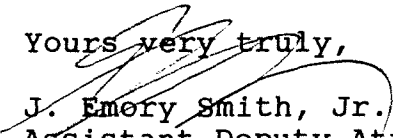
The following rule of statutory construction is applicable here: The "...primary function in interpreting a statute is to ascertain the intention of the legislature." South Carolina Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E. 2d 134 (1986). "Where the terms of a statute are clear and unambiguous, there is no room for interpretation and we must apply them according to their literal meaning." Id.

Applying this rule to the last sentence of Proviso 19.11 leads to the conclusion that the sentence applies to all school districts in the State. Literally, the sentence, itself, is not limited to only those districts now authorized by Proviso 19.11 to charge fees. Although the first sentence of the proviso does reference such districts and must be considered¹, the proviso indicates no legislative intent or purpose to limit the exemptions for free and reduced lunch students to those students residing in districts which had not previously been authorized to charge fees. Other provisos related to the school lunch program make no such distinctions. See, eg., provisos 19.30, 19A.17 and 19A.24; see also §59-63-710, et seq. Therefore, the legislative intent appears to be that the Proviso 19.11 exemptions for students receiving free and reduced price lunches apply to all school districts rather than only to those districts which have not previously had statutory authority to charge matriculation and incidental fees.

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

If you have further questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Deputy Attorney General

CC: Office of General Counsel, Department of Education

JESjr

¹ "... [T]he meaning of particular terms in this statute may be ascertained by reference to words associated with them in [the] statute." Southern Mutual Church Insurance Company v. Windstorm and Hail Underwriting Assoc., ___ S.C. ___, 412 S.E.2d 377 (1991).