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# The State of South Carolina



## Office of the Attorney General

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April 21, 1992

The Honorable Barbara S. Nielsen, Ed. D.  
State Superintendent of Education  
South Carolina Department of Education  
Rutledge Building  
Columbia, South Carolina 29201

Dear Dr. Nielsen:

You have requested the opinion of this Office as to the inflation factor that must be applied to determine the local financial effort that must be maintained by school districts. S.C. Code Ann. Section 59-21-1030 (Supp. 1991) states that "...school districts shall maintain at least the level of financial effort per pupil for non-capital programs as in the prior year adjusted for an inflation factor estimated by the Division of Research and Statistical Services." According to your staff, the question of which factor to apply has arisen because a proviso in the House Appropriations Bill states that an inflation rate of 4.3% is incorporated into the base student cost of \$1,569.00 for Education Finance Act purposes (H4500, Part I, Section 28.21, 1992). My understanding from your staff is that this "4.3%" is the same as the Research and Statistical Services' factor referenced in § 59-21-1030; however, your staff has also informed me that the actual increase in that base student cost over the cost used in the 1991 - 1992 fiscal year is only .45% due to the application of the 4.3% rate to a lowered base. If enacted, you have asked what effect the proviso would have upon the requirements of Section 59-21-1030. Your staff indicates that you need this question to be addressed before final action on the House Bill because of the directive in Section 59-1-449 (1990) that the Department report to the districts an analysis of all local effort requirements by May 1st of each year.

The following rule of statutory construction is applicable here: "Where the terms of a statute are clear and unambiguous, there is no room for interpretation and [they must be applied] according to their literal meaning." South Carolina Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E.2d 134 (1986). Here, in unmistakable language, Section 59-21-1030 states that the level of financial effort must be "...adjusted for an inflation factor estimated by the Division of Research and

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- (4) Mid-year revenue shortfall results in a reduction of funds appropriated in accordance with Chapter 20 of Title 59 (The Education Finance Act)...a decline in the measured academic achievement of the students must immediately cause the State Board of Education to void all waivers provided by this Section....Waiver (4) does not apply to funds needed to meet the minimum salary requirements for teachers in South Carolina.

None of the above four waiver provisions expressly apply to the situation alone of EFA funding's having increased at a rate lower than the inflation factor that the school district must apply to the local financial effort. Nevertheless criteria 1, 2 and 4 apply to circumstances in which a district is receiving less revenue than expected. In particular, criteria 4 applies to EFA shortfalls although the express terms of this part apply only to mid-year revenue shortfalls.

The following rule of statutory construction applies here:

In the construction of statutes, the dominant factor is the intent, not the language of the legislature....a statute must be construed in light of its intended purposes, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute. Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984).

Here, when waiver is permitted because of a mid-year EFA fund reduction, the legislative intent appears to be that a waiver should be permitted when the level of EFA funding is reduced or increased at the outset of the ensuing fiscal year by a rate lower than that provided by Research and Statistical Services.


This conclusion about requests for waivers here is consistent with other statutory provisions with which the waiver provision may be construed. Sutherland Statutory Construction, Volume 2A, Section 51.02; Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970). Section 59-20-50 provides that "...no district shall receive annually an increase in state funds less than 4/5's of the inflationary adjustment in the base student cost specified in Section 59-20-40(1)(b)." In addition, the amount of required local EFA funding is based upon the level of the State's share of EFA funding. See Section 59-20-40(e). See also proposed proviso Section 28.21 and Ops. Atty. Gen. No. 86-53 (April 28, 1986). Because under these other statutory provisions, local EFA funding is tied to the level of state effort under the EFA, a reasonable conclusion is that the General Assembly would have intended the waiver provisions of paragraph 4 to apply to a situation in which the EFA funding increase is less than the Division of Research and Statistical Services inflation factor.

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Of course, whether to grant a waiver is a decision for the State Board of Education under Section 59-21-1030 and not for this Office to make. In addition, I note that waiver criteria 4 does not apply to funds needed to meet the minimum salary schedule for teachers in South Carolina (Section 59-21-1030, supra); however, although the salary schedule must be met and local salary supplements to the schedule must be maintained at a "level" no lower than the 1983 - 1984 level, inflationary increases are not required in the local salary supplement. Ops. Atty. Gen. No. 86-53, supra.


In conclusion, the calculation of the local financial effort under Section 59-21-1030 must be based upon the inflation factor estimated by the Division of Research and Statistical Services and not upon the actual percentage increase in the base student cost under the Education Finance Act. See proposed proviso 28.21, supra. If proviso 28.21 is passed with an increase in Education Finance Act funding less than the Research and Statistical Services proviso, a school district may apply for a waiver under the criteria for Section 59-21-1030. Whether to grant such a waiver would be a decision for the State Board of Education. Finally, these conclusions are based upon the assumption that proviso 28.21 is adopted by the General Assembly as now written in the above House Bill and that no other provisos are added to the Appropriations Act or other statutory changes made which would alter these conclusions. Of course, whether to enact legislation is a decision for the General Assembly to make and not this Office. If you need additional information, please let me know.


Yours very truly,

  
J. Emory Smith, Jr.  
Assistant Attorney General

JES,JR:jca

REVIEW AND APPROVAL:

  
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