The State of South Carolina

Office of the Attorney General

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March 14, 1991

Barbara D. Dilligard, Ed.D.
Deputy Superintendent for Personnel
Charleston County School District
The Center, Room 224
Meeting & Hutson Streets
Charleston, South Carolina 29403

Dear Dr. Dilligard:

You have requested that our Office review its opinion of December 28, 1990, to the Honorable McKinley Washington concerning employee longevity pay supplements of the Charleston County School District. In that regard, you have supplied copies of correspondence to and from the District which reflect the conception and development of the longevity pay supplement prior to its imposition.

The standard for review of opinions issued previously by this Office is whether such opinion is "clearly erroneous." A prior opinion will not be overruled unless and until it is found to be clearly erroneous. On occasion, a prior opinion must be superseded due to amendments to the law upon which the conclusion was based; such is not the case here, however.

Upon a careful review of our opinion to Senator Washington as well as much consideration given to the materials enclosed with your letter, we cannot conclude with certainty that the opinion of December 28, 1990, is clearly erroneous. It may certainly be argued that the longevity pay supplement is in the nature of a one-time bonus, and indeed a court evaluating all relevant facts and circumstances might so conclude. But it is inescapable that the longevity pay supplement is clearly local in nature and supplementary to the teachers' annual salary, and local salary supplements are not to be lower than those paid in the prior fiscal year.

While such does not appear to be the case here, we must express our concern about circumstances under which a school district might adopt a bonus pay system on a year-to-year basis in an attempt to

circumvent the Education Improvement Act. One may imagine a pay supplement disguised as a bonus, so that form is exalted over substance and ostensibly a pay supplement is never adopted. In our view, interpreting the Education Improvement Act to avoid such a result is consistent with legislative intent. McGlohon v. Harlan, 254 S.C. 207, 174 S.E.2d 753 (1970).

For the foregoing reasons, we do not feel that the opinion of December 28, 1990 to Senator Washington is clearly erroneous. Thus, the conclusion of that opinion is hereby reaffirmed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions

cc: The Honorable McKinley Washington, Jr.