

The State of South Carolina



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Gentlemen:

In 1984, the Education Improvement Act was enacted by the General Assembly with a one-cent sales tax increase to fund it. Act No. 512 of 1984, Part II, Section 9. The Act makes mandatory certain improvements with the state's educational system. In part, the Act requires a pupil-teacher ratio of 25 to 1 during the 1986-1987 school year. Section 59-29-200, CODE OF LAWS (1976), as amended. Apparently, due to shortfall predictions for 1986-1987 revenues, the General Assembly enacted legislation, R-624, Part II, Section 17, during the 1986 session, in effect postponing implementation thereof.

Governor Riley, on June 18 of this year, vetoed Part II, Section 17, and the General Assembly failed to override the veto. The effect of the veto technically is to restore the EIA mandate for the reduced teacher-pupil ratio requirements for the 1986-1987 school year.

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You inquire as to whether or not the local school districts involved are legally required to finance, through increased local taxes or otherwise, the designated ratio. The answer is no. Section 12-35-1559 of the CODE (The Education Improvement Act) provides as follows:

[t]he compensation and employer contributions of any new personnel employed for the purposes of implementing specific provisions of the [EIA] must be paid from funds appropriated for that purpose by the General Assembly from funds derived from increased revenue provided for in the [EIA] fund.

It is my understanding that at least some individual districts have funded earlier pupil-teacher ratio reductions required by this Section of the EIA. The "plain reading" 1 / of the above quoted language provides, however, that EIA improvements required by school districts be financed by state appropriations and I find no legal basis upon which to impose such liability upon these school districts. 2 /

Accordingly, the failure to appropriate funds for the ratio reduction is, in effect, a decision by the General Assembly to make inoperable Section 59-29-200 until state funding therefor is provided. 3 / Please note, however, that the Governor has established a committee to identify alternative means of state funding for the program which, hopefully, will assist in solving the problem.

I support the EIA and hope that it will meet with ultimate success. Essential, of course, to its success is a strong, forward looking state commitment of the type which gave rise to this issue. Equally essential to its success, however, is the continuing strong support of the people, without which no law can succeed. To sustain public support, the state need only comply with the letter and spirit of the law and honor the bargain struck. 4 /

Sincerely



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Footnotes

1. Hay v. South Carolina Tax Commission, 273 S.C. 269, 255 S.E.2d 837 (1979); Merchants Mutual Insurance Co. v. S.C. Second Injury Fund, 277 S.C. 604, 291 S.E.2d 667 (1982).

2. Consistent with my conclusion is the statement contained in The Education Improvement Act of 1984, a handbook published in February, 1985, by the University of South Carolina, which interprets Section 12-35-1559 as requiring "the state to pay the total salary and fringe benefits of new personnel employed to implement the Education Improvement Act." This contemporaneous construction is presumed correct. Sutherland Statutory Construction, Vol. 2A, Section 49.04.

3. Op. Atty. Gen., October 25, 1976. Even though there is no prohibition upon a district providing funding to meet the required ratios, there exists no legal obligation on the part of the districts to fund the 1986-1987 ratio reductions, notwithstanding any prior voluntary funding by districts of previous ratio reductions required by Section 59-29-200. See: Staley v. Paddock, 301 So.2d 878 (Mo. 1957). [A voluntary payment does not impose a legal obligation]. See also: Section 12-35-1559 (does not preclude school districts from providing additional compensation and employee contributions to implement EIA).

Moreover, my conclusion is not altered by the Governor's veto of Section 17. While vetoed acts are a factor which a court can consider, Sutherland Statutory Construction, Vol. 2A, Section 51.04, the veto is not in direct conflict with the postponement of implementation of the ratio until state funds are provided. Section 17 would have delayed implementation until the 1988-1989 school year, but the Legislature can appropriate money to implement the ratio at any earlier time if it so chooses.

4. It is well recognized that a rule of law must maintain public support and acceptance to remain in force. See: Waller v. First Savings and Trust Co., 133 So. 780 (Fla. 1931). A law must "coincide with public opinion and cannot stand against it." Prosser and Keeton on Torts, p. 18.