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Office of the Attorney General

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September 5, 1985

The Honorable Charlie G. Williams
State Superintendent of Education
South Carolina Department of Education
Rutledge Building
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested the advice of this office as to the effect of an amendment to a provision of the Education Improvement Act providing for the fingerprinting of school children. Section 59-63-50 of the Code of Laws of South Carolina, 1976 as amended by Act 201, Part II, Section 9 (J). The amended provision reads as follows with the one sentence deleted marked with X's and the one sentence added underlined:

> "Each county shall provide to every school in the county the forms and ink pads necessary to record each pupil's fingerprints in kindergarten and grades one through twelve. The State Law Enforcement Division and all local law enforcement agencies are instructed and authorized to assist local school authorities in the fingerprinting of school children in kindergarten and grades one through twelve when the parent of a child requests in writing that his child be fingerprinted for identification purposes for the protection of the child. XThe fingerprints must be maintained as a permanent part of the student records. <u>The fingerprints must be given to the student's parents or guardian</u>. They must be under the

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> custody and control of the school board, subject only to inspection by school officials, parents, guardians, or persons permitted by order of the court. When a child is no longer in regular attendance, the fingerprint identification must be returned to the child if he is eighteen years of age or older or to the child's parent or guardian if the child is under eighteen years of age.
>
> The implementation of this section is a local responsibility and it must be implemented as the local school board determines appropriate."

Your question is whether the amendment removes the responsibility of the school districts to maintain a record of the fingerprints in the students' records. Although the amendment is ambiguous, we conclude that the legislature most probably intended that the school districts not be required to maintain records of the fingerprints, at least, when the fingerprints are given to the students' parents or guardians.

The ambiguity arises because the amended version of §59-63-30 deleted the express requirement that "[t]he fingerprints must be maintained as a permanent part of the student records" but retained requirements that the fingerprints be under the "custody and control" of the school board, etc. The following rules of statutory construction are useful to resolve this ambiguity:

> "...[T]he provisions introduced by the amendatory act should be read together with the provisions of the original section that were reenacted in the amendatory act or left unchanged thereby, as if they had been originally enacted as one section. Effect is to be given to each part, and they are to be interpreted so that they do not conflict. If the new provisions and the reenacted or unchanged portions of the original section cannot be harmonized, the new provisions should prevail as the latest declaration of the legislative will.... (Emphasis added.) Sutherland Statutory Construction, Vol. 1A, §22.34 (4th Ed.).
>
> "...All matter that is omitted in the Act or Section which the amendment purports to set out as amended, is considered repealed." Id, §23.12.

This rule is consistent with the following rule of construction of the South Carolina Supreme Court:

> "In the construction of statutes, the dominant factor is the intent, not the language of the legislature. Able v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956). A statute must be construed in light of its intended purposes, and, if such purpose can be reasonably be discovered from this language, the purpose will prevail over the literal import of the language. Id." Spartanburg Sanitary Sewer District v. City of Spartanburg, ____ S.C. ____, 321 S.E.2d 258 (1984).

Here, the deletion of the express requirement that the students' fingerprints be maintained as a permanent part of their records evidences legislative intent that this requirement no longer be imposed. See Sutherland, §23.12. The title of the amendments supports this construction in its statement of purpose "to amend §59-63-50, ...so as to provide that the fingerprints must be given to the students or parents or guardians rather than maintained as a permanent part of the student records." (Emphasis added). See Sutherland, Vol. 2A, §47.03. The other portions of the statute referring to the fingerprints' being under the "custody and control" of the School Board and the fingerprints' being "returned" when a child is no longer in regular attendance, can be given effect by a school district's maintaining "custody" of the fingerprints until they are given to the child or the child's parents. To read the statute to require the district to maintain records of the fingerprints after giving them to the parents would be inconsistent with the requirement that the parents be given "the fingerprints" (emphasis added) and with the deletion of the requirement that the fingerprints be maintained as a permanent part of the student records; however, as a precaution we suggest that, upon delivery to the parents or children, the school districts obtain their written acceptance of the "custody" of the fingerprints. The "acceptance" should note that the district will not maintain records of the fingerprints. This release of the "custody" of the fingerprints should be consistent with the provisions of §59-63-50 which give the school boards the discretion to implement the fingerprint provisions as they deem appropriate.

In conclusion, we believe that the statute does not require the school districts to keep the fingerprints in the records of children when the prints have been properly delivered to the children; however, because of the ambiguity in the language, a court would not be precluded from interpreting this statute differently. For this reason, legislative action may be desirable to resolve these ambiguities in express terms. Until any such legislative action, a district may wish to consider the precaution of maintaining a copy

of the prints in a temporary file even though the prints are delivered to the children or their parents. We emphasize that this approach is a precaution only and it does not appear to be required by the statute.

If you have any questions, please let me know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

JESjr/srcj

REVIEWED AND APPROVED BY:

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