

1983 WL 181780 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 7, 1983

*1 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 opinion of this office as to whether children who are not South Carolina residents may attend South Carolina schools free of charge under the terms of [§ 59-63-30\(c\) of the Code of Laws of South Carolina \(1976\)](#). This statute provides that children meeting other requirements of that statute are entitled to attend the public schools of any district free of charge if they own ‘. . . real estate in the district having an assessed value of three hundred dollars or more . . .’ The children in question are ones who would cross the South Carolina border on a daily basis to attend school in this State.

[Section 59-63-30\(c\)](#) does not expressly state whether its provisions are limited to South Carolina residents. To resolve this question, this section should be read with reference to Art. XI § 3, Constitution of South Carolina, 1895, as amended, as both provisions address the same subject. See [Sutherland Statutory Construction](#), Vol. 2A § 51.05 (4th Ed.) Article XI § 3 directs the legislature to provide ‘. . . for a system of free public schools open to all children in the State . . . (emphasis added)’.

Because [§ 59-63-30](#) indicates no intention to extend a free education to children other than those ‘in the state’ under Art. XI § 3, this statute’s scope is no greater than that of the constitutional provision. [Sutherland, supra](#). The plain meaning of ‘children in the state’ under the provision appears to be children who are to some degree physically located in South Carolina. [Sutherland](#), Vol. 2A § 46.01, *et seq.* Whether actual residence is required need not be decided here as the provision indicates no intention to apply to a physical contact so fleeting as a daily border crossing for school attendance purposes. Therefore, because the scope of [§ 59-63-30\(c\)](#) is not greater than that of Art. XI § 3, the border crossing children are excluded from the statute’s property ownership provisions. See *Ops. Atty. Gen.* (December 7, 1982, by J. Emory Smith, Jr., Assistant Attorney General).

If we may be of further assistance, please contact us.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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