

1984 WL 250001 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 29, 1984

\*1 Mr. Harry W. Davis, Jr.  
Commissioner  
Department of Youth Services  
SCN Center  
1122 Lady Street  
Suite 500  
P. O. Box 7367  
Columbia, South Carolina 29201

Dear Harry:

You have requested the advice of this office as to whether the Education Finance Act funding for the Department of Youth Services (DYS) must be provided on a twelve (12) month basis rather than on a nine (9) month basis. A proviso to the DYS section of the 1984 Appropriations Act states that '... funds made available to the Department of Youth Services under the Equal School Finance Act shall be calculated on a twelve (12) month basis.' Act 512, Part 1, Section 54, Acts and Joint Resolutions of South Carolina, 1984. Apparently, this proviso refers to the Education Finance Act (EFA) funds although that title is not used. [Section 59-20-10 et seq. of the Code of Laws of South Carolina](#) 1976, as amended. Although a plain reading of this proviso indicates that this money must be provided on a twelve (12) month basis, ([Sutherland Statutory Construction](#), Vol. 2A § 46.01 (4th Ed.)), this conclusion is complicated by the apparent absence of the actual funds for the extra three (3) months included in the twelve (12) month program.

The EFA funding for DYS comes from the Department of Education's section of the Appropriations Act; however, we have been advised by the Department of Education (Department) that the DYS proviso in question was inserted after budgetary figures were provided to the General Assembly. Those figures were based on nine (9) months of EFA funding for DYS, and were never altered by the legislature. Therefore, according to the Department, only nine (9) months of funding for DYS's share of the EFA is actually included in the dollar figures of the Appropriation Act although this fact is not demonstrated by a particular line item in that Act. Act 512, Part 1, Section 28. Moreover, provisos in the Department of Education's section of the Appropriations Act concerning the calculation of EFA funding for DYS give no indication that those funds are to be calculated on any basis other than the same 'base student cost' that is used for school districts in the State which operate on a nine (9) month basis. See Act 512, Part 1, Section 28; Sections 59-20-20 (6) and 59-20-40. Therefore, the question here is whether the twelve (12) month provision in Section 54 is controlling as to the provisos and money in Section 28.

'The subject of Appropriations Bills is to make appropriations to meet the ordinary expenses of State government and to direct the manner of expending those funds.' [State Farm Mutual Auto Insurance Company v. Smith](#), 281 S.C. 209, 314 S.E.2d 333, 335 (1984). 'In general, when a proviso is attached to an appropriations bill, such proviso must be complied with before the money can be released.' 1975 *Ops. Atty. Gen.* #4078. Here, at a glance, the provisos in Sections 28 and 54 of the Appropriations Act might be said to be inconsistent; however, they should be construed with reference to each other and to the Appropriations Act as a whole in an effort to give effect to all parts of the Act. See [Sutherland](#), Vol. 2A, Section 46.05. Because it is the only specific reference to the length of time for which EFA funding is to be provided for DYS and because it uses mandatory language, Section 54 appears to define further the amount of EFA funding that is required to be provided to DYS. See [Parrish v. Gilstrap](#), 280 S.C. 184, 312 S.E.2d 4, 5 (1984); see also [Section 20-7-3240 of the Code](#), as amended; cf. [Sutherland](#), § 51.05. Thus, the EFA funding apparently must be provided on a twelve (12) month basis.

\*2 These conclusions are not free doubt because of the inconsistency between § 28 and § 51 and the apparent absence of actual funding. See also § 59-20-40. Therefore, legislative clarification early in the 1985 session of the General Assembly may be desirable as a means of resolving these issues while some time remains in the 1984-85 fiscal year.

In conclusion, the Appropriations Act indicates that DYS should receive EFA funding that has been calculated on a twelve (12) month basis; however, if a reduction in the EFA funding for other school districts is required in order to give DYS an additional three (3) months share, then DYS should receive a pro rata reduction in its total EFA allocation also. As noted above, enough doubt exists so that legislative clarification may be desirable early next year.

If we may be of other assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.  
Assistant Attorney General

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