1982 WL 189297 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
May 19, 1982

***1** Dr. Josef F. Stulac, II
Director
S. C. Educator Improvement Task Force
1602 Bull Street at Taylor
Columbia, South Carolina 29201

Dear Buzz:
You have requested the opinion of this office as to a number of matters concerning the implementation of Act 187, Acts and Joint Resolutions of South Carolina, 1979 (§ 59-26-10, et seq. of the Code of Laws of South Caroling (1976), as amended). You questions relate to what may transpire at the meetings if a joint meeting is held between the Educator Improvement Task Force (Task Force) and the South Carolina State Board of Education (Board) under § 59-26-50(c)(4). Unfortunately, Act 187 contains no express answers to these problems.

The procedure for approval of an implementation plan is set out at § 59-26-50(c)(4). Under this procedure, if the Board and Task Force have not been able to agree to a plan, they are to have a joint meeting and a majority vote of the two bodies '. . . shall determine the plan to be implented'. The law does not state which plan would be the subject of the joint meeting's vote; however, the vote would, at least, include the 'original plan' submitted to the Board and rejected a second time or 'a revised' plan submitted and rejected. § 59-26-50(c)(4).

That the legislature would limit the possibility of compromise by restricting the joint meeting's considerations of plans only to these two is a result that does not have support in the language of Act 187. Thus, the Board and Task Force, in their joint meeting, appeal to have the discretion to depart from the language of the original and revised plans to attempt to agree to a compromise plan. This conclusion is supported by the fact that the original plan might be the only plan formally presented prior to the joint meeting if the Task Force had re-submitted it to the Board after its initial rejection. Little purpose would be likely to be served by holding a joint meeting if this twice rejected plan would be the only one that could be considered and no modification could be made in it.

The State Board appears to have the authority to suggest alternative plans at the join meetings. Although under § 59-26-50 the Task Force is given the only authorityto present plans prior to that meeting, the idea of a joint meeting suggests that the two bodies are to work together. Thus, the Board could make proposals in an attempt to resolve differences between it and the Task Force; however, these plans could not go so far as to make the State Board the body that actually develops the various examinations and instrucments used under Act 187. These duties belong to the Task Force. See §§ 59-26-30(b) and 59-26-50(b).

The joint meeting appears to have the authority to approve no plan despite the many requirements in Act 187 for a July 1, 1982 implementations date. See 1981 Op. Att'y. Gen. No. 81-14, p. 19. As noted above, the plan must be selected by a majority vote. In the meeting, conceivably, the original, the revised and/or a compromise plan could each fail to receive a majority. To interpret the procedure of § 59-26-50 and the law's July 1 deadlines to compel that some unnemed majority approve some unspecified plan is totally inconsistent with the nature of voting and is not supported by the statutory language. In fact, the law creates one of the possibilities for not plan's receiving a majority vote in that, under § 59-26-50(c)(4), the only plan before the joint meeting could be the original plan if the Task Force had re-submitted it to the Board after its initial rejection. A compromise plan might not be available because the law does not require the development of a compromise plan. Thus, if the original did not receive a majority vote and it was the only one considered, no plan would be approved.

***2** The phrase 'majority vote of the Board and Task Force' under general rules of construction for the term 'majority vote' should be construed to mean '. . . more than one-half of the vote, excluding blanks or abstentions, at a meeting at which a quorum is present.' Roberts Rules of Order (1981) § 43, p. 339. See also Chase v. Board of Trusteees of Nebraska State Colleges, 194 Neb. 688, 235 N.W.2d 223 (1975). Thus, the number of people voting would be the base figure for determining the majority. That the Task Force and the Board hold a joint meeting and that the statute uses the singular form of 'vote' with reference to the two bodies indictes that the vote is to be taken of the combines membership of the bodies rather than by separate votes of each part.

The manner in which the meeting business, including the vote, is conducted should rest within the discretion of the meeting participants. The members should first consider whether to elect one person to preside. Although Act 187 provides for the meeting's being called by the chairman of both bodies, it does not require that both preside. Having one do so would be more consistent with common parliamentary practice. After electing a chairman, the joint meeting should then consider what rules of procedure to follow. Because it provides a codification of present day parliamentary laws, Roberts should be followed int he absence of a vote to the contrary; however, those at the meeting may wish to specify how any plan or plans will be brought before the meeting for a vote since a number of different ways of proceeding are available.

The failure of the joint meeting to approve a plan would mean, of course, that implementation dates could not possibly be met; however, no liability of Task Force and Board members to etiher the State or private citizens would appear to exist from the simple fact of failing to meet the deadlines because of their not reaching a majority vote for a plan. That a private individual could claim some injury resulting from the vote for which the Task Force and Board would be liable does not seem likely. Any duties to implement the statute appear to be owed solely to the public, and thus, they could not form a basis for a private action. Parker v. Brown, 195 S.C. 35, 105 S.E.2d 625 (1940).

The consequences of not meeting the deadline appeal to be that not further steps could be taken to implement a plan without approval from the legislature. The law contains no specific provisions for the situtation, and thus, no authority for any public body to approve and implement the plan. In fact, the Task Force will terminate on July 1, 1982 under the provisions of § 59-26-50(d). This section contains provisions for the General Assembly's extending the operation of the Task Force and the implementation dates. Thus, the legislature appears to have intended that only that body could take such action. Accordingly, the General Assembly is the only body which can direct what shall be done if the implementation dates are not met. Until the legislature took action in such a situation, the State should continue to operate under existing education, certification and employment procedure. Any parts of Act 187 not encompassed by a failed plan could operate as directed by that law.

***3** Because of the absence of express statutory direction, the matters discussed herein are certainly not free from doubt. Only a declaratory judgment suit or action by the legislature can resolve them with certainly.

If we may be of further assistance, please let us know.
Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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