ALAN WILSON
ATTORNEY GENERAL

July 9, 2015

The Honorable Molly M. Spearman
State Superintendent of Education
South Carolina Department of Education
1429 Senate Street
Columbia, SC 29201

Dear Superintendent Spearman:

You have requested the opinion of this Office regarding the statutory interpretation of S.C. Code Ann. § 59-19-350 (Supp. 2014), which, as the caption of such section suggests, permits the creation of "[s]chools of choice exempt from state laws and regulations." You ask whether the language chosen by the Legislature in Section 59-19-350(A), permitting a district to create "*a school* of choice within the district," implies that only *one* school of choice can receive such designation within a certain district. You also question whether a school of choice is permitted to seek exemption status from the requirement that schools may not begin before the third Monday in August, as specified in S.C. Code Ann. § 59-1-425 (2004), amended by Act No. 21, 2015 S.C. Acts ____.[1] Our analysis of your two questions follows.

Law / Analysis

Section 59-19-350 was enacted as part of Act No. 164 during the 2012 legislative session. See Act No. 164, 2012 S.C. Acts 1661, 1664, 1688-89. It reads as follows:

> (A) A local school district board of trustees of this State desirous of creating an avenue for new, innovative, and more flexible ways of educating children within their district, may create a school of choice within the district that is exempt from state statutes which govern other schools in the district and regulations promulgated by the State Board of Education. To achieve the status of exemption from specific statutes and regulations, the local board of trustees, at a public meeting, shall identify specific statutes and regulations which will be considered for exemption. The exemption may be granted by the governing board of the district only if there is a two-thirds affirmative vote of the board for each exemption and the proposed exemption is approved by the State Board of Education.
>
> (B) In seeking exemptions, the local board of trustees may not exempt:

[1] Act No. 21 of 2015 amended subsections (B) and (C) of S.C. Code Ann. § 59-1-425 (2004). S.C. Code Ann. § 59-1-425 and Act No. 21 of 2015 will hereinafter be referred to collectively as "Section 59-1-425."

(1) federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, national origin, religion, ancestry, or need for special education services;

(2) health, safety, civil rights, and disability rights requirements as are applied to other public schools operating in the district;

(3) minimum student attendance requirements;

(4) state assessment requirements; and

(5) certification requirements for teachers in the core academic areas as defined by the federal No Child Left Behind Act, Public Law 107-110; however, up to twenty-five percent of the teaching staff of the school may be employed if the individual possesses a baccalaureate or graduate degree in the subject he is hired to teach.

(C) Any school created pursuant to this section shall admit all children eligible to attend the school subject to space limitations and may not limit or deny admission or show preference in admission decisions to any individual or group of individuals.

(D) A local school district that provides exemptions pursuant to subsection (A) shall provide the State Department of Education with documentation of the approved exemptions and shall submit evaluation documentation to be reviewed by the State Board of Education after three years of the exemption to ensure that the district continues to meet the needs of its students. Upon review, if the State Board of Education determines the continuation of the exemption does not meet the needs of the students attending the district school of choice, the board may suspend exemptions granted by the local board of trustees with a two-thirds vote. Before suspending the exemptions, the State Board of Education shall notify the district and provide the district with any opportunity to defend the continuation of approved exemptions.

S.C. Code Ann. § 59-19-350 (Supp. 2014).

As your questions are ones of statutory interpretation, several rules are relevant to our analysis. The cardinal rule of statutory construction is of course to ascertain and effectuate the intent of the legislature. Charleston County Sch. Dist. v. State Budget and Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993) (citing Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980)). Pursuant to the plain meaning rule, a court cannot change the meaning of a clear and unambiguous statute. In re Vincent J., 333 S.C. 233, 235, 509 S.E.2d 261, 262 (1998) (citing Paschal v. Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995)). Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. Id.

"What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature." Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed. 1992)) (internal quotations omitted). Courts will reject statutory interpretations that lead to absurd results clearly unintended by the legislature or that defeat the plain legislative intent. Peake v. South Carolina Dep't of Motor Vehicles, 375 S.C. 589, 599, 654 S.E.2d 284, 289 (Ct. App. 2007).

I. Should "a school of choice," as Used in Section 59-19-350(A), be Interpreted as Having Singular or Plural Meaning?

Relating to your first question and in regards to singular and plural tense, it has been summarized that "[a]s is always the case with statutory construction, courts prefer to rely on a word's plain, ordinary meaning where possible, and so give singular meaning to singular words and plural meanings to plural words, absent a clear contrary intent." 2A Sutherland Statutory Construction § 47:34 Singular and plural numbers (7th ed. 2014). "The legislature is presumed to have fully understood the meaning of words used in a statute and, unless this meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense." Pee v. AVM, Inc., 344 S.C. 162, 168, 543 S.E.2d 232, 235 (2001). Furthermore, "[i]t is a cardinal principle of statutory construction that a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word will be superfluous, void, nugatory, or insignificant." 82 C.J.S. Statutes § 433 (2015).

We believe the plain language of S.C. Code Ann. § 59-19-350 (Supp. 2014) is unambiguous and evidences the Legislature's intent of providing local school districts with requirements and procedures for creating a new, innovative, and flexible way of educating children. This intent is expressed in the Act's title[2] as well as in the body of the statute itself, both providing that: "[a] local school district board of trustees of this State desirous of creating an avenue for new, innovative, and more flexible ways of educating children within their district, may create a school of choice within the district that is exempt from state statutes which govern other schools in the district and regulations promulgated by the State Board of Education." S.C. Code Ann. § 59-19-350(A); Act No. 164, 2012 S.C. Acts 1661, 1664 (emphasis added).

Looking only to the plain language of the S.C. Code Ann. § 59-19-350 (Supp. 2014), we believe the legislature's intent of providing "an avenue" for "new, innovative, and more flexible ways of educating children" is effectuated by allowing a district to create "a school of choice." In other words, we believe it was the legislature's intent that singular meaning be given to "a school of choice" within the phrase "[a] local school district board of trustees . . . may create a school of choice. . . ." S.C. Code Ann. § 59-19-350 (Supp. 2014). Such interpretation does not produce an absurd result.

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[2] As we have previously noted, ". . . the title or caption of an act may be properly considered to aid in the construction of a statute and to show the intent of the Legislature." Op. S.C. Att'y Gen., 2004 WL 2451474 (Oct. 15, 2004) (citing Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972)).

This conclusion is further strengthened by the legislature's choice of the singular tense of the word "avenue," in providing districts with "*an avenue* for new, innovative, and more flexible ways of educating children . . . ." Id. Furthermore, in characterizing between "*a school* of choice" and "*other schools* in the district" a clear distinction is made between the use of singular tense in the former and plural tense in the later, which we believe must be interpreted as intentional. Id. (emphasis added).

An example of a district that has created more than one school of choice which you provided in your opinion request further indicates that the legislature did not intend for "a school of choice," as used in Section 59-19-350(A), to have plural meaning. Specifically, you explain that: "[a] county school district has created an all choice district in that all thirty (30) schools in the district are choice schools, pursuant to § 59-19-350." First we point out that in this instance, by giving plural meaning to singular words, *i.e.*, a school of choice, portions of S.C. Code Ann. § 59-19-350 (Supp. 2014) would lack meaning. To explain, the legislature distinguished that a "district may create *a school of choice* within the district that is exempt from state statutes which govern *other schools in the district* . . . ." Id. (emphasis added). If a district chose to implement all schools of choice as described above, this provision would lack meaning being that no "other schools in the district" governed by state statutes would exist.

As we believe the statute's language conveys a clear and definite meaning, does not produce an absurd result when interpreted, and gives meaning to all provisions of the statute, it is our opinion that a court would find S.C. Code Ann. § 59-19-350 (Supp. 2014) permits a local school district board of trustees to create one school of choice within its district for the purpose of providing new, innovative, and more flexible ways of educating children.

II. Can a School of Choice Seek Exemption from § 59-1-425?

As is also included in the title of Act 164, it is clear the legislature intended to provide "the requirements and procedures to implement . . . schools of choice." Act No. 164, 2012 S.C. Acts 1661, 1664. Section 59-19-350 therefore provides the requirements and procedures to implement a school of choice and obtain the status of exemption from specific state statutes and regulations. Section 59-19-350(A) provides in part that:

> [t]o achieve the status of exemption from specific statutes and regulations, the local board of trustees, at a public meeting, shall identify specific statutes and regulations which will be considered for exemption. The exemption may be granted by the governing board of the district only if there is a two-thirds affirmative vote of the board for each exemption and the proposed exemption is approved by the State Board of Education.

S.C. Code Ann. § 59-19-350(A) (Supp. 2014). However, Section 59-19-350(B) prohibits certain types of laws and requirements from exemption, specifically stating that:

> [i]n seeking exemptions, the local board of trustees may not exempt:

> (1) federal and state laws and constitutional provisions prohibiting discrimination on the basis of disability, race, creed, color, national origin, religion, ancestry, or need for special education services;
>
> (2) health, safety, civil rights, and disability rights requirements as are applied to other public schools operating in the district;
>
> (3) minimum student attendance requirements;
>
> (4) state assessment requirements; and
>
> (5) certification requirements for teachers in the core academic areas as defined by the federal No Child Left Behind Act, Public Law 107-110; however, up to twenty-five percent of the teaching staff of the school may be employed if the individual possesses a baccalaureate or graduate degree in the subject he is hired to teach.

S.C. Code Ann. § 59-19-350(B) (Supp. 2014).

As to whether a school of choice can seek exemption status from Section 59-1-425, which includes the requirement that schools may not schedule the opening date for students before the third Monday in August, we look to the well-established cannon of statutory construction titled "expressio unius est exclusio alterius" which means that the enumeration of particular things excludes the idea of something else not mentioned. Little v. Town of Conway, 171 S.C. 27, 171 S.E. 447, 448 (1933); see also Hodges v. Rainey, 341 S.C. 79, 86-87, 533 S.E.2d 578, 582 (2000). Under this rule, "[t]he enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded. Exceptions strengthen the force of the general law and enumeration weakens it as to things not expressed." Rainey, 341 S.C. at 87, 533 S.E.2d at 582.

With this rule in mind, the content of Section 59-1-425 relates to the beginning and length of the statutory school term; make-up days for times when a school was required to close for snow, extreme weather, or other disruptions; requirements for the length and content of instructional days; and a provision regarding waiver of the school opening date requirement. Thus, the contents of Section 59-1-425 do not appear to fall within the list of types of laws and requirements prohibited from exemption specified in § 59-19-350(B), *i.e.* anti-discrimination laws and constitutional provisions; health, safety, civil rights, and disability requirements applied to other public schools operating in the district; minimum student attendance requirements[3]; or

[3] We believe minimum student attendance requirements are clearly distinguishable from the required length and beginning date of the statutory school term. Compare S.C. Code Ann. § 59-1-425(A) (2004) (stating in part that "[t]he statutory school term is one hundred ninety days annually and shall consist of a minimum of one hundred eighty days of instruction covering at least nine calendar months. However, beginning with the 2007-2008 school year the opening date for students must not be before the third Monday in August, except for schools operating on a year-round modified school calendar") with 24A S.C. Code Ann. Regs. 43-274 (Supp. 2014) (providing in part that "[t]he district board of trustees, or its designee, shall approve or disapprove any student's absence in excess of ten days, whether lawful, unlawful, or a combination thereof, for students in grades K-12. For the purpose of awarding

state assessment requirements. Pursuant to the maxim "expressio unius est exclusio alterius," since the contents of Section 59-1-425 are not included in the list of exclusions enumerated in Section 59-19-350(B), it is our opinion that this implies that the General Assembly did not intend to limit a school of choice from seeking exemption status from Section 59-1-425, including the prohibition from scheduling the opening date for students before the third Monday in August.

Conclusion

In line with the legislature's intent in enacting Act No. 164 of 2012, it is our opinion that a court would interpret Section 59-19-350 of the South Carolina Code as permitting a local school district board of trustees to create one school of choice within its district. It is also our opinion that a court would find that the General Assembly did not intend to limit a school of choice from seeking exemption status from Section 59-1-425 of the South Carolina Code, including the prohibition from scheduling the opening date for students before the third Monday in August. Prior to achieving the status of exemption, we reiterate that a proposed exemption must be introduced by the local board of trustees at a public meeting, passed by a two-thirds vote of the governing board of the district, and approved by the State Board of Education.

Should you have any additional questions, please do not hesitate to contact our Office.

Very truly yours,

Anne Marie Crosswell

Anne Marie Crosswell
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Solicitor General

credit for the year, school districts must approve or disapprove absences in excess of ten days regardless as to whether those absences are lawful, unlawful, or a combination of the two").