

1979 S.C. Op. Atty. Gen. 24 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-13, 1979 WL 29019

Office of the Attorney General

State of South Carolina

Opinion No. 79-13

January 26, 1979

**\*1 SUBJECT: Education**

(1) The State Department of Education shall apportion day care funding among the qualifying school districts subject to the practical limitations of the total amount appropriated from year to year by the General Assembly.

(2) The established day care programs would be subject to the division of the total amounts of funds for all day care programs provided these existent programs continued to meet State Department of Education qualifications.

TO: Dr. Charlie G. Williams  
State Superintendent of Education  
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QUESTION:

(1) Are all the funds appropriated in the future in regards to day care programs as provided in Part I, Section 31 of the 1978 General Appropriations Act, Act No. 644 of 1978 to be competitive up to the line item of the appropriation?

(2) What is the interpretation regarding the continuation of funding of established day care programs?

STATUTES AND CASES:

Section 31 of the 1978 General Appropriations Act, Act. No. 644; [Jones v. South Carolina State Highway Department, 146 S.E.2d 166, 247 S.C. 132 \(1966\)](#); [Sutherland Statutory Construction](#), Volume 2A § 57.03.

DISCUSSION:

(1) Part I, Section 31 of the 1978 General Appropriations Act, Act No. 644 of 1978 provides in part that: Provided, Further, The State Department of Education shall promulgate regulations and guidelines to enable any school district in the state to establish day care centers and receive funds from appropriations to day care centers if the district's day care program is approved by the department. The school districts added to the day care center program may initiate their programs beginning with the 1979–80 school year.

The Supreme Court of South Carolina stated in [Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 \(1966\)](#) that:

The first rule of construction in the interpretation of statutes is that of intention on the part of the legislature and where the terms of a statute are clear and not ambiguous, there is no room for construction, and courts must apply them according to their literal meaning.

Application of the above rule of statutory construction to the day care program portion of the 1978 General Appropriations Act would indicate that the use of the word 'shall' is mandatory. 'Ordinarily, the use of the word 'shall' in a statute carries with it the presumption that it is used in the imperative rather than in the directory sense.' [Jersey City v. State Board of Tax Appeals](#), 133 N.J.L. 202, 43 A.2d 799 (1945), quoted in [Sutherland Statutory Construction](#), Volume 2A, § 57.03

This interpretation of 'shall' accompanied by the use of 'any school district' demonstrates that the legislature intended that if any particular day care program in the State met the regulations and guidelines established by the State Department of Education, the day care program would be eligible for state funding. The statute further states that this is to take effect beginning with the 1979–1980 school year.

\*2 The Legislature has appropriated \$1,005,469.00 during the year 1978–1979 to support child care programs in fourteen school districts. In the future, unless otherwise provided for by the legislature, the total amount of funding for day care centers must be apportioned by the State Department of Education among the school districts qualifying. Therefore, the funds would be competitive up to the line item of the appropriation.

(2) As long as the already existent day care programs in fourteen school districts continue to qualify with the State Department of Education's guidelines, they would receive funding subject to the division of funds among the total districts qualifying which would presumably increase in 1979–1980.

CONCLUSION:

Any school district's day care program, once approved under State Department of Education guidelines, will be eligible for appropriations to day care centers, beginning with the 1979–1980 school year. Commencing with the school year 1979–1980, existing day care programs, meeting State Department of Education guidelines, will have no greater entitlement to day care appropriations than new day care programs coming into existence in school districts in school year 1979–1980.

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