

1982 WL 189497 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 7, 1982

\*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 several matters relating to a South Carolina school district's enrolling and transporting students residing in North Carolina. Apparently some of the district's bus routes follow roads between points in South Carolina which curve through North Carolina. The district has been transporting some North Carolina students living along these routes and allowing them to attend district schools.

A previous opinion of this office held that the statute now codified as [Section 59-19-90\(10\)\(d\) of the Code of Laws of South Carolina \(1976\)](#) gives school district trustees the discretion to allow out-of-state residents to attend district schools on an individual basis. 1972 Ops. Atty. Gen., No. 3430, p. 313. (copy enclosed) <sup>1</sup> This statute grants trustees the power '... to prescribe conditions and a schedule of charges based on cost per pupil, as last determined, for attendance in the [district schools] for ... (d) ... children specially situated and not meeting the eligibility requirements of § 59-63-30, but who shall have petitioned the trustees in writing seeking permission to attend the public schools of the district.' Under this statute, as interpreted by the above opinion, the South Carolina school district may allow the North Carolina students to attend its schools.

[Section 59-19-90\(10\)](#) requires that a 'schedule of charges' be set for the non-resident students 'based on cost per pupil'. <sup>2</sup> Reading this statute with reference to other provisions of state law indicates that the students must pay the full cost of their education. Statutes providing for the transfer of students from one district to another make those students responsible for paying only the local share of their education costs. Sections 59-63-480 and 59-63-510. The transfer provisions recognize that the transfer makes no difference in the state's share of the cost of education except that, under the much more recently passed Education Finance Act, state allocations may vary proportionately from one district to the next. [See § 59-20-40 of the Code](#), as amended. In contrast, a North Carolina student's attending school in South Carolina would impose an additional funding burden on the state. Thus, the charges imposed under [§ 59-19-90\(10\)](#) must be intended by the legislature to include the state's share of the out-of-state resident's education costs.

Because the student is paying the district the state's funding share, the state's paying the district that share would result in overpayment to the district. Therefore, the state should withhold from the district a per pupil share of funds for each North Carolina resident. This conclusion is consistent with [Article XI § 3 of the Constitution of South Carolina \(1895\)](#), as amended, which directs the General Assembly to provide 'for the maintenance and support of a system of free public schools open to all children in the state (emphasis added).'

\*2 South Carolina State Board of Education Rule 43-80, Vol. 24 of the Code, states that '[p]upils shall not be transported from one district or attendance area to another when an appropriate school is provided within the district or attendance area.' The regulation should include out-of-state students and would operate here to bar the transportation of the North Carolina students on state owned buses unless they do not have appropriate schools in their district; however, a recently passed amendment to the regulations allows for variances in the regulations by the Department of Education, upon the written request of the district,

‘ . . . when clearly in the interest of safety, efficiency and economy.’ (South Carolina State Register, Vol. 6, Issue 9). That a variance could be adopted to allow the transportation of North Carolina students is doubtful. Section 59-67-420 declares that state policy is ‘ . . . to assume no obligation . . . to furnish transportation . . . ’ for children outside their school districts when their own districts provide the same grade in an ‘appropriate school’. This statute seems to bar any transportation of such students. Its providing only one exception to the 1 ½ mile restriction and the statute's specifically allowing transportation across district lines only when appropriate schools are unavailable indicates that the legislature has set forth the only circumstances under which children living within 1 ½ miles of schools or across district lines may be transported.<sup>3</sup> The absence of references to costs indicates that the statute's expression of policy applies to the actual transportation of students. Thus, the State Department of Education does not appear to have the power to adopt a variance so as to allow the transportation of the North Carolina students.

The opinion of this office is that a school district has the discretion to allow the attendance of out-of-state students provided that the students pay the entire cost of their education. State funds for the state costs of educating those pupils should be withheld and the students may not be transported on state owned buses; however, local legislation should be checked to determine if exceptions exist for any districts desiring to accept out-of-state students. No such exceptions exist for the district about which you have asked. If we may be of further assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.  
Assistant Attorney General

#### Footnotes

- 1 This opinion also found independent authority under a special statute for Horry County. I have located no such statute for the school district in question here.
- 2 Because the district has the discretion as to whether the out-of-state resident may be accepted for enrollment, the district should be permitted to designate whether the child's state or family should pay the charges.
- 3 No opinion is expressed as to what is an ‘appropriate school, as to whether the North Carolina children could be transported if an appropriate North Carolina school does not exist for them, and if so, whether the children should be charged for the service.

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