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Office of the Attorney General

State of South Carolina

Opinion No. 80-60

May 23, 1980

***1 Subject: Education, Teachers, Certification**

- (1) Act No. 187 of 1979 limits certification of teachers in South Carolina to graduates of approved teacher training programs.
- (2) The term 'teachers' as used in Act No. 187 of 1979 generally includes classroom teachers, supervisors of classroom teachers, and evaluators of classroom teachers.
- (3) The term 'teachers' in Act No. 187 of 1979 includes trade and industrial education teachers.
- (4) Act No. 187 of 1979 does not apply to persons such as school psychologists who do not otherwise come within the definition of 'teacher'.
- (5) The requirement in Act No. 187 of 1979 for a full semester of student teaching does not apply to service personnel such as school psychologists or guidance counselors.
- (6) School districts upon employing certified teachers who initially taught in private schools must comply with the requirements for provisional and annual contracts in Act No. 187 of 1979.

To: Dr. Charlie G. Williams
State Superintendent of Education

Questions:

1. Does Act 187 of 1979, indicate that in the future, all certification of teachers in South Carolina will be based upon completion of approved programs with no method of certification on a course-by-course basis?
2. Does the term 'teachers' as used in Act 187 include principals, assistant principals, supervisory personnel and service personnel who have no direct classroom teaching responsibilities?
3. Does the term 'teachers' as used in Act 187 include trade and industrial education teachers who have not had professional education college courses?
4. Does Act 187 apply to persons, such as school psychologists, who are certified at the graduate level on the basis of approved programs which are not in the school, college or department of education?
5. Does the requirement for a full semester of student teaching apply to service personnel such as school psychologists or guidance counselors?
6. How should Act 187 be applied to certified teachers who teach initially in private schools and later elect to seek positions in the public schools?

Statutes and Cases:

Constitution of South Carolina, 1895, as revised, at Art. XI, §3; Act No. 187, Acts and Joint Resolutions of South Carolina, 1979; §§ 59–25–110, 59–25–20, 59–25–40, 59–23–10, *et seq.*, 59–21–720, Code of Laws of South Carolina, 1976, as amended; [Rabon v. South Carolina State Highway Department](#), 258 S.C. 154, 187 S.E.2d 652 (1972); [City of Spartanburg v. Leonard](#), 180 S.C. 491, 186 S.E.2d 395 (1936); [Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376 (1970); [Varn v. Beattie](#), 171 S.C. 424, 172 S.E. 442 (1934); [South Carolina State Highway Department v. Barnwell Bros.](#), 303 U.S. 177, 58 S.Ct. 510, 82 L.Ed. 734 (1938); [McMillan Feed Mills, Inc., of South Carolina v. Mayer](#), 265 S.C. 500, 200 S.E.2d 221 (1975); [Abell v. Bell](#), 229 S.C. 1, 91 S.E.2d 548 (1956); [Criterion Insurance Company v. Hoffman](#), 258 S.C. 282, 188 S.E.2d 459 (1972); [Home Building and Loan Association v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 138 (1937).

Discussion:

*2 1. ‘Does Act 187 of 1979, indicate that in the future, all certification of teachers in South Carolina will be based upon completion of approved programs with no method of certification on a course-by-course basis?’

By constitutional provision, the General Assembly is mandated to provide a system of free public schools throughout South Carolina. Constitution of South Carolina, 1895, as revised, at Art. XI, § 3. Pursuant to this authority, the General Assembly has delegated authority to the State Board of Education to ‘. . . formulate and administer a system for the examination and certification of teachers.’ [Section 59–25–110](#). [Section 59–25–20](#) prohibits boards of school trustees from employing any teacher who does not possess a South Carolina Teaching Certificate. Until the enactment of Act No. 187, [Acts and Joint Resolutions of South Carolina](#), 1979 (hereinafter the Act), the two aforementioned statutes, along with [§ 59–25–40](#), constituted the only statutory law concerning teacher certification in this state.

Act No. 187 of 1979, now codified as [§ 59–26–10, et seq.](#), Code of Laws of South Carolina, 1976 (1979 Cum. Supp.), states the intention of the General Assembly in part as follows:

It is the intent of this chapter to provide for a fair and comprehensive program for the training, certification, initial employment and evaluation of public educators in this state.

Section 59–56–10 makes clear the intent of the General Assembly to insure that prospective teachers in South Carolina possess basic skills and an understanding of particular teaching areas. The new Certification Act is written in broad terms, and the Act contains no exceptions for any class of prospective teachers. The only exceptions contained in the Act are for teachers coming into South Carolina after receiving teacher training or actual teaching experience in other states. With regard to the first question herein, the most telling section of the Act is § 59–26–30(f) which states:

Award a teaching certificate to any person who successfully completes the scholastic requirements for teaching at an approved college or university and the examination he is required to take for certification purposes.

Thus, the General Assembly has statutorily specified two absolute prerequisites for obtaining a teaching certificate in South Carolina. A prospective teacher must graduate from an approved teacher training program and satisfactorily take the proper examination. The Act specifies standards for both prerequisites, which are to be implemented and enforced by the State Board of Education, Commission on Higher Education, and the Educator Improvement Task Force.

[Section 59–25–110](#) grants the State Board of Education broad authority in the area of teacher certification. This statute constituted the sole authority for the State Board's comprehensive and detailed system of teacher certification until the enactment of Act No. 187 of 1979. The State Board's certification regulations, however, have received legislative approval in abbreviated form. General certification requirements have been incorporated into the Defined Minimum Program, which requirements are based upon the State Board regulations. The Defined Minimum Program, required by the Education Finance Act of 1977, must

be approved by the General Assembly, pursuant to the State Register Act, [§ 1–23–10](#), *et seq.* [Section 59–25–110](#) and the Act are not ambiguous when read together; therefore, no construction is necessary and both statutes must be given full effect, insofar as possible. [Rabon v. South Carolina State Highway Department](#), 258 S.C. 154, 187 S.E.2d 652 (1972).

*3 The real question here is to what extent the State Board of Education retains rule-making authority in light of the rather detailed provisions of the Act. The State Board has heretofore and continues to certify prospective teachers based upon a course-by-course review of an applicant's college performance. As previously stated, § 59–26–30(f) requires the State Board of Education to award a teaching certificate to a prospective teacher who completes the required certificate to a prospective teacher who completes the required at an approved college or university . . . 'The 'scholastic requirements' for teaching obviously are in reference to the statutory requirements set forth in the Act at § 59–26–20 as applied to 'an approved college or university'. *See also*, R 43–90 ('Policies and Procedures Utilized by the South Carolina State Board of Education in the Approved Programs of Study in Professional Education Offered by Colleges and Universities in South Carolina'). The statute, thus, requires successful completion of both criteria as prerequisites to state certification. Looking to the intent of the Act as specified in [§ 59–26–10](#), *supra*, the inescapable conclusion is that the General Assembly intended the ' . . . comprehensive program for the training, certification, initial employment and evaluation of public educators . . . ' to include all prospective teachers. [City of Spartanburg v. Leonard](#), 180 S.C. 491, 186 S.E.2d 395 (1936). Had the General Assembly intended to allow exceptions or discretion to the State Board of Education, it could and would have stated any exceptions in the Act, as was done for graduates of teacher training programs outside South Carolina.

This is not to say, however, that the State Board of Education is without rule-making authority in the area of teacher certification. Nothing in the Act appears to limit the Board's authority to issue emergency or out-of-field permits. *See* § 59–26–40. Further, the Board is not stripped of authority to continue its current certification practices, directed at personnel not coming within the term 'professional educators' as in question 2 herein discussed. *See* Opinion No. ___, Ops. Att'y Gen., September 6, 1979, interpreting Act No. 187 of 1979.

2. 'Does the term 'teachers' as used in Act 187 include principals, assistant principals, supervisory personnel and service personnel who have no direct classroom teaching responsibilities?'

The Act does not define any of its terms. The legislative intent is set forth in [§ 59–26–10](#), specifying a program directed at 'public educators'. Thereafter, the Act in its various sections speaks in terms of educators, prospective teachers, student teachers, beginning teachers, practice teachers, teachers, prospective school teachers, provisional teachers, public school teachers, classroom teachers, and public school administrators. Concededly, most of the above terms can be understood, taken in the context in which they are used; however, the intended scope of the terms 'public educator', 'prospective teacher', and 'teacher' are not clearly defined. As such, the Act neither expressly nor implicitly states whether the terms 'educator' and 'teacher' include principals, assistant principals, superintendents, or service personnel.

*4 [Section 59–26–10](#) further expresses the intent of the legislature in its subparts as follows:

(a) Upgrade the standards for educators in this State in a fair, professional and reasonable manner.

(b) Assure that prospective teachers have basic reading, mathematics and writing skills.

(c) Improve the educator training programs and the evaluation procedures for those programs.

(d) Insure that prospective teachers know and understand their teaching areas and are given assistance toward the achievement of their potential.

(e) Enable the use of evaluation standards that will aid in determining whether beginning teachers can apply fundamental teaching skills in the classroom.

That the General Assembly deemed necessary the use of a term broader than ‘teacher’ is noteworthy. The South Carolina School Code defines the term ‘teacher’ at § 59–1–130, stating:

‘Teacher’ means any person who is employed full time by any school district either to teach or to supervise teaching.

The terms ‘public educator’ and ‘educator’ are not defined in South Carolina statutory law; so, these terms must be defined with reference to a standard dictionary, which defines ‘educator’ as follows:

1: one skilled in teaching: TEACHER

2a: a student of the theory and practice of education: EDUCATIONIST

2b: an administrator in education

Webster's Third New International Dictionary, G. & C. Merriam Company (Springfield, Mass. 1976).

The above quoted portions of § 59–26–10 indicate that the Act was drawn to include persons in addition to full-time classroom teachers. On the one hand subsections (b), (d), and (e) address only prospective or beginning teachers on matters involving classroom teaching. On the other hand subsections (a) and (c) use the broader term ‘educator’ and do not limit application to matter relevant only to classroom teaching. Therefore, the apparent intention of the General Assembly must have been to include persons in addition to classroom teachers within the scope of the Act.

A more difficult question is raised in determining which ‘public educators’ in addition to classroom teachers, the legislature intended to include. Clearly, any person coming within the statutory definition of ‘teacher’, specified in § 59–1–130, is within the scope of the Act. This includes teachers and their supervisors. The Act rather clearly includes those persons charged with the evaluation of teachers, as required in §§ 59–26–30 and 59–26–40. Beyond the above stated classifications the Act is generally silent; however, giving a fair reading to the Act in toto, the specific provisions are directed almost entirely at prospective classroom teachers, classroom teachers, teacher supervisors, and teacher evaluators. As such, no hard and fast rule can be stated whether principals, assistant principals, supervisory personnel, and service personnel are covered. The specific duties of a given job will determine coverage. For example, if an assistant principal supervises the daily activities of classroom teachers or is a teacher evaluator, then the assistant principal is a ‘public educator’ as envisioned by the Act. Reading the Act and § 59–1–130 in pari materia, which is necessary to resolve the ambiguity created by use of differing terminology, an individual analysis of the duties of personnel other than teachers will be necessary. [Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376 (1970).

*5 3. ‘Does the term ‘teachers’ as used in Act 187 include trade and industrial education teachers who have not had professional education college courses?’

The discussion in response to question number one in this Opinion notes the comprehensive nature of the Act and the lack of stated exceptions to the new requirements for training, certification, and evaluation of teachers. The General Assembly is presumed to be aware of existing statutes and valid regulations of a state agency. [Varn v. Beattie](#), 171 S.C. 424, 172 S.E. 442 (1934), and [South Carolina State Highway Department v. Barnwell Bros.](#), 303 U.S. 177, 58 S.Ct. 510, 82 L.Ed. 734 (1938). This is to say that, presumptively, at the time the legislature enacted Act No. 187, it was aware that industrial education teachers were teaching in South Carolina public schools without the benefit of college courses in professional education. The Act in question is neither ambivalent nor ambiguous to the extent that it is applicable to all prospective classroom school teachers in South Carolina; therefore, prospective industrial education teachers in this state are also subject to the express requirements of the Act.

4. ‘Does Act 187 apply to persons, such as school psychologists, who are certified at the graduate level on the basis of approved programs which are not in the school, college or department of education?’

A school psychologist does not appear to be a ‘public educator’, ‘teacher’, or one supervising or evaluating teachers; therefore, a school psychologist would not come within the express terms of the Act. Further, § 59–21–720 provides the State Board of Education specific statutory authority to issue certificates to school psychologists, according to regulations established by the State Board. As a general rule of statutory construction, a general and a specific statute are to be read together and harmonized, but if the two statutes conflict, the special statute will prevail. [Criterion Insurance Company v. Hoffman](#), 258 S.C. 282, 188 S.E.2d 459 (1972). Therefore, the State Board possesses the statutory authority, independent of the Act, to certify school psychologists.

In construing statutes, all rules are subservient to the tenet that the legislative intent must prevail if it can be reasonably discovered in the language of the statute. [McMillan Feed Mills, Inc., of South Carolina v. Mayer](#), 265 S.C. 500, 220 S.E.2d 221 (1975). Here, the clear object of the Act is to regulate training, certification, and evaluation of classroom teachers; thus, persons who do not teach are without the intended scope of the Act. [Abell v. Bell](#), 229 S.C. 1, 91 S.E.2d 548 (1956). In addition to psychologists, personnel such as guidance counselors and media specialists (librarians) most probably do not come within the Act. The rationale set forth in question 2 herein is applicable here; that is, the duties of personnel must be considered individually to determine whether an individual is a ‘teacher’.

*6 5. ‘Does the requirement for a full semester of student teaching apply to service personnel such as school psychologists or guidance counselors?’

The discussion in Parts 2, 3, and 4 herein are incorporated in this Part. The requirement for a full semester of student teaching in Act No. 187 of 1979 is directed toward students in approved teacher training programs, which students eventually will seek state certification as classroom school teachers. In that school psychologists and guidance counselors do not appear to come within the term ‘teacher’, as defined in § 59–1–130, or within the terms ‘classroom teacher’ or ‘public educator’ in Act No. 187, such service personnel are not required to complete a full semester of student teaching.

6. ‘How should Act 187 be applied to certified teachers who teach initially in private schools and later elect to seek positions in the public schools?’

Section 59–26–40 specifies in detail the manner in which a certified teacher may be employed in the public school districts of this state. A school teacher, initially teaching in a private school after obtaining state certification, would, upon employment in a public school district, be treated just as any recent college graduate with state certification. This is to say that, upon initial employment in a public school district, a teacher may only be hired in compliance with the scheme established in § 59–26–40. Except in one instance, the Act recognizes no exceptions in its comprehensive scheme for teachers who initially teach in private schools. The Act does provide special consideration for teachers who complete ‘. . . an approved teacher training program at a college or university outside this state. . . .’ Section 59–26–40. Teachers in that category who have teaching experience outside this state are given special consideration, regardless of whether having taught in public or private schools. That the Act is silent regarding alternative teaching experience for resident teachers in South Carolina, indicates that the General Assembly did not intend any exceptions in the application of the Act to that class of teachers. [Home Building and Loan Association v. City of Spartanburg](#), 185 S.C. 313, 194 S.E. 138 (1937).

Teachers, initially teaching in private schools, are not public educators; therefore they are not subject to the requirements of the Act. The procedures, established in § 59–26–30 for the evaluation of classroom teachers as specified in § 59–26–40, are not applicable to teachers in private schools. The General Assembly did not make evaluation of teachers by use of the ‘observational instrument’ a prerequisite to certification. Section 59–26–30(f) fully states the certification requirements, and once certification is obtained, the Act requires no further action on the part of teachers or administrators to maintain certification. Likewise, the Act places no time restrictions upon the validity of a certificate. That the certificate provided in the Act is not of limited duration is clearly apparent in the Act’s legislative history. In the ‘Report of the Joint House and Senate Committee to Study the NTE and Teacher Certification in South Carolina’ from which the Act was spawned, the following recommendation was made:

*7 After a teacher has successfully completed the necessary course work from an approved college or university and the heretofore-mentioned (sic) examinations, any school district may employ that teacher on a one-year provisional certificate.

The recommendation further provides for full certification only after successful completion of a provisional teacher period during which the teacher would be evaluated no less than three times. The same or a substantially similar provision appears in the Legislative Council's draft bill for the NTE Study Committee, as well as in S.528, both as originally introduced and as passed by the Senate. The provision for a provisional certificate was deleted in the House of Representatives, in accordance with the 'Report' of the House Education and Public Works Committee. The House version, concerning the awarding of a certificate, became the language of the Act. The legislative history just outlined evinces an intent on the part of the General Assembly that teachers be fully certified prior to employment in a public school district and evaluation as provisional classroom teachers. Thus, teachers certified pursuant to the Act need not undergo the evaluation specified in §§ 59-26-30(g)(3) and 59-26-40 in order to maintain full certification.

Conclusion:

The Act is a comprehensive piece of legislation, establishing many new standards for teacher certification, where before, none had existed. The Act should be given a liberal and fair reading, and where the Act conflicts with the present State Board of Education certification regulations, the Act will prevail. The conclusions to the specific questions posed are set out in the discussion directed at each question herein.

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