

1980 WL 120960 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 6, 1980

\*1 Dr. William E. Chaiken  
Chairman  
South Carolina Educator Improvement Task Force  
1602 Bull Street at Taylor  
Columbia, South Carolina 29201

Dear Dr. Chaiken:

You have requested a review of the October 20, 1980 opinion of this Office concerning the contract which the Educator Improvement Task Force (Task Force) has made with National Evaluation Systems, Inc. for test development. The previous opinion was not written until a full review had been made of all of the provisions of Act 187, Acts and Joint Resolutions of South Carolina (now codified as [§ 59-26-10, et seq. of the Code of Laws of South Carolina \(1976\)](#), as amended) and reference was made in the opinion to portions of the Act which had given you concern. However, this Office has reviewed the opinion at your request and we have concluded that it remains correct and valid as issued.

Most of the questions which you have posed in your letter of October 24, 1980 are directed to your concern that other duties of the Task Force create a need for the development of new teaching examinations for those areas presently covered by area examinations of the National Teacher Examinations (NTE); however, regardless of whether this need exists, the legislature has made clear that new examinations shall not be developed for those areas for any purpose. 'Full effect must be given to each section of a statute giving words their plain meaning, and, in the absence of ambiguity, words must not be added or taken away.' [emphasis added]. [Hartford Accident and Indemnity Company v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 \(1979\)](#). The legislation in question plainly states that '[t]he teaching examinations shall be developed or selected only for those areas in which area examinations of the National Teacher Examinations are not available.' [emphasis added]. § 59-26-30(b)(2). No other provision of Act 187 indicates a legislative intent other than what is clearly stated in this quotation. The legislature was aware of the other duties it was imposing on the Task Force when it passed Act 187, but it qualified them by the directive in paragraph (b)(2). If the Task Force believes that the extra examinations are necessary, then it must seek a change in the law before it develops them.

Your specific questions are addressed below and numbered as they were presented.

1. The Act does not bar the Task Force from examining alternatives to the NTE with reference to its duties under § 59-26-50(c) (6); however, the Act does prevent it from developing or selecting the alternative examinations. § 59-26-30(b)(2).

Your question concerning the upgrading of NTE standards is one of fact, the answer to which can be more appropriately obtained from sources other than this Office.

2. As you have stated, Act 187 does refer to the reporting of the results of the examinations to students in a form that will provide them information concerning their strengths and weaknesses (see eg. § 59-26-30(d)); however, regardless of the usefulness of NTE score reports in providing feedback to the students, the legislature has mandated that those examinations be used. § 59-26-30(i). See No.'s 5 and 6, infra. A change in the law would be required to permit the development and usage of alternative examinations.

\*2 3. and 4. Regardless of whether the usage of the NTE is a maintenance of existing standards for educators (see § 59-26-10(a)), or constitutes a failure to give prospective teachers assistance toward the achievement of their potential (§ 59-26-10(d)), the legislature has directed that the NTE be administered. The provisions to which you refer are merely guidelines for interpreting and implementing the provisions of Act 187. They do not alter the unambiguous language of § 59-26-30(b)(2).

5. and 6. Section 59-26-30(d) sets forth the following requirements for the reporting of certification examinations: Report the results of the teaching examinations in such form that he will be provided specific information about his strengths and weaknesses. Every effort shall be made to report the results of the area examinations and common examinations to the student in such a form that he will be provided specific information about his strengths and weaknesses.

This section sets forth two duties, the first of which applies to the new examinations to be developed and the second of which applies to the NTE. See § 59-26-30(b)(2), (e), and (i).<sup>1</sup> In requiring only 'every effort' in reporting NTE results, the legislature indicated its recognition that the duty would have to be described by the nature of those examinations. Thus, this provision does not contemplate the Task Force's consideration of alternative examinations to the NTE. More importantly, the legislature has directed that the NTE be used and that alternatives not be developed. § 59-26-30(b)(2).

7. Section 59-26-30(i) does not allow the Task Force to select or develop equivalent tests in order to compare them and the NTE for concurrent validity. Section 59-26-30(b)(2) does not permit the development of alternative examinations to the NTE for any purpose.

8. Consultants may not be employed under § 59-26-30(a) for the development of alternative examinations to the NTE. § 59-26-30(b)(2). They are not barred from being employed for other purposes which are consistent with Act 187.

9. Act 187 does not require the Task Force to contract with any particular company for the development of the new teaching examinations. Instead it indicates that the matter is discretionary within the directives of § 59-26-30.

No opinion is expressed herein as to the advice that you state that you have been given concerning the employment of two different administrators of the area examinations using two different types of tests.

10. No opinion of this office is expressed herein as to the advice you state that you have been given concerning the use of norm-referenced tests. Assuming, arguendo, that it is correct, you must still continue to follow the mandates of § 59-26-30(b)(2) and (i).

11. The letter issued by this Office on July 28, 1980 was not an Opinion letter, but advice to the Task Force that it must observe the usual legal procedures for advertising, bidding and awarding a contract to prepare tests. The procedures were followed and the contract was awarded in accordance therewith. No opinion of this Office was asked as to the scope and content of the work to be performed by the contractor.

\*3 12. The Act restricts the development and usage of the new teaching examinations to those areas in which NTE area examinations are not available without expressly defining those circumstances in which an examination should be considered 'available' (§ 59-26-30(b)(2) and (i)); however, the Act's clear preservation of the usage of the NTE and its retention of NTE area examination qualifying scores (§ 59-26-30(i)) indicates a general intention to preserve the status quo as to the usage of those examinations. The status quo should be those areas of certification for which NTE area examinations had been validated and specified for use by the State Board of Education. See State Board of Education Requirements for Teacher Education and Certification, Part 2, § 2.1.

You have also mentioned a proposal made by the State Department of Education concerning special education certification. Some misunderstanding appears to exist as to the details of this proposal. If you are not able to resolve your questions concerning it after discussion with Department officials, please let us know if we may assist.

13. Section 59-26-30(b)(2) does not permit the development of the extra examinations regardless of their cost.

I hope that this opinion will help to clarify your questions concerning Act 187. If I may be of further assistance, please let me know.

Yours very truly,

J. Emory Smith, Jr.  
Assistant Attorney General

#### Footnotes

- 1 That § 59-26-30(d) contains two similar requirements indicates that it must have been intended to apply to different examinations. The term 'teaching examinations' is used in the last sentence of § 59-26-30(b)(2) and in the second paragraph of § 59-26-30(i) so as to refer only to the new examinations. But see § 59-26-30(e). That this usage was intended in § 59-26-30(d) is demonstrated by the second sentence of that subsection which applies only to area and common examinations. Because the common examinations are parts of the NTE, the area examinations in that sentence must also be those that are administered by the NTE. Thus, because the NTE examinations are covered by the second sentence, the 'teaching examinations' in the first sentence must refer to the new ones to be developed.

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