1980 WL 120793 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 25, 1980

***1 RE: Opinion on Act No. 482 of 1980**

Honorable Charlie G. Williams
State Superintendent of Education
Rutledge Building
Columbia, South Carolina 29201

Dear Dr. Williams:
You have requested an opinion of this office concerning the proper application of § 2(A) of Act No. 482 of 1980 (the Act), which Act was signed by the Governor and became effective on June 11, 1980. Specifically, you inquire whether § 2(A) of the Act should be applied retrospectively or only prospectively.

The South Carolina Supreme Court has addressed the general question of retroactivity of statutes, and in Hyder v. Jones, 271 S.C. 85, 245 S.E.2d 123 (1978), the Court stated the general rule as follows:
In the construction of statutes there is a presumption that statutory enactments are to be considered prospective rather than retroactive in their operation unless there is a specific provision or clear legislative intent to the contrary. Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973). No statute will be applied retroactively unless that result is so clearly compelled as to leave no room for reasonable doubt:
'. . . the party who affirms such retroactive operation must show in the statute such evidence of a corresponding intention on the part of the Legislature as shall leave no room for reasonable doubt. It is not necessary that the Court shall be satisfied that the Legislature did not intend a retroactive effect. It is enough, if it is not satisfied that the Legislature did intend such effect. Ex Parte Graham, 47 S.C. Law (13 Rich. Law) 53 at 55 56 (1864). See also: Pulliam v. Doe, 246 S.C. 106, 142 S.E.2d 861 (1965).

See also 73 Am. Jur.2d Statutes § 347. The statute in question does not expressly mandate retrospective application, either in § 2(A) or in any other part.

Further, a thorough examination of Act. No. 482, section by section and in toto, fails to glean any implied intent on the part of the General Assembly that the Act be retrospectively applied. Indeed, enactment of the statute after the close of the normal period for the one hundred eighty (180) day instructional year runs counter to its application to the 1979-80 school year. The final pupil count required by the Education Finance Act of 1970 (EFA) to be submitted to the State Department of Education was due in April, 1980. Thus, Finance Act payments for the remainder of the 1979-80 scholastic year were determined and commenced prior to the effective date of Act No. 482.

Without the aforementioned express or implied language, a statute will be given retrospective application only if it was enacted as curative or remedial legislation. Section 2(A) of Act No. 482 cannot clearly be deemed curative or remedial. The clearest expression of intent, of course, can be found in a legislative preamble; however, Act No. 482 contains no legislative findings or declarations. The Act's title provides no guidance, either. See S.C. Digest, Statutes, Keys 210, 211.

***2** Even assuming that the Act was intended as curative, its practical effect militates against retrospective application. Section 2(A) of the Act will likely increase the pupil count for some school districts, resulting in a greater entitlement to state funds

under the EFA. Likewise, a higher pupil count will increase the school districts' local burden under the EFA. Thus, retrospective application of the Act to a school district with eligible students will impose a higher obligation for 1979-80 local funding on that district, if it is not funded above the minimum required by the EFA.

In Dunham v. Davis, 229 S.C. 29, 91 S.E.2d 716 (1956), the Supreme Court applied the general rule that even a curative statute cannot be applied retrospectively if such application would impair vested private rights. This 'constitutional limitation' also becomes operative when a retroactive application of a statute imposes new obligations on past events. While the holding in Dunham may, strictly speaking, be obiter dictum, as to public bodies, the reasoning of that case appears well suited to the facts herein. This is particularly so given the lack of express or implied language in the Act indicting legislative intent of retrospective application. The statute in question in Dunham, deemed a curative one by the Court, was denied retrospective application, even though the General Assembly devoted one section to expressly stating how it could be so applied.

Based upon the foregoing discussion, the opinion of this office is that § 2(A) of Act No. 482 of 1980 may not be applied retrospectively.
Sincerely,

Paul S. League
Assistant Attorney General

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