

1979 WL 43123 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 22, 1979

*1 Dr. Charlie G. Williams
State Superintendent of Education
Rutledge Office Building
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested an opinion from this Office as to whether a school district may make-up two days of school missed due to extreme weather conditions by extending the instructional hours for a specific number of days.

Section 59-1-380 of the Code of Laws of South Carolina (1976) provides, in part, as follows:

Notwithstanding any other provisions of law to the contrary, the State Board of Education may, upon request of the governing body of any school district, suspend five make-up days when the schools in such district shall have been closed because of extreme weather conditions or extreme circumstances. Provided, however, such suspension shall not apply to the first two days as the result of such extreme weather conditions or other extreme circumstances.

This statute discusses suspension of 'make-up days' but does not describe the circumstances under which such make-up days are required. The following rules of construction are applicable here:

In construing a law of doubtful meaning or application, the policy which induced its enactment, or which was designed to be promoted thereby, is a proper subject for consideration, where such policy is clearly apparent or can be legitimately ascertained. Indeed, the proper course in all cases is to adopt that sense of the words which promotes in the fullest manner the policy of the legislature in the enactment of the law, and to avoid a construction which would alter or defeat that policy. Even the literal meaning of the terms employed should not be suffered to defeat the manifest policy intended to be promoted. 73 Am. Jur. 2d Statutes § 153.

Because the legislature does not define 'make-up days,' it must have intended to refer to 'make-up days' required by other provisions of law. Thus, the purpose of this legislation must have been merely to express the legislature's interest in alleviating the number of make-ups that might be necessitated due to weather or other factors and to give the Board the authority to excuse certain of these make-ups.

The following provision for the school term is contained in the Appropriations Act, Act No. 199, § 29, Acts and Joint Resolutions of South Carolina, 1979:

... the statutory school term shall be one hundred and eighty-five days annually and ... at least one hundred and eighty days shall be used for student instruction and the remaining five days may be used for the preparation of opening and closing of schools and for in-service training.¹

The terms of this Act would force any district operating a 185 day term to make-up two missed days because the district would not otherwise meet the 185 day requirement.

The method by which this time should be made up should be controlled by Act No. 199 and § 59-1-380. Act No. 199 requires the length of the school term to be 185 'days' and § 59-1-380 refers to make-up 'days.' The following rules of construction are applicable to those uses of the word 'days':

*2 . . . 'the intention of the Legislature must be gathered from a literal interpretation of the language of the statute where it is plain and unambiguous.'

'when the meaning of words is so plain and obvious, the courts cannot speculate on the intention.'

[Independence Insurance Co. v. Independent Life and Accident Insurance Co.](#), 218 S.C. 22, 61 S.E. 2d 399, 405 (1950). Applying these rules of construction here, a reasonable interpretation of § 59-1-380 is that its provision for make-up days means 'days' of class rather than additional hours of instruction. Similarly, the requirements of Act No. 199, § 29 must be intended to require 185 actual days of school.

In conclusion, a school district operating a 185 day term under Act No. 199 must make-up two days missed due to weather. These days must be made up by additional days of class rather than by extending the hours of instruction on existing days.

If I can be of further assistance to you, please let me know.

Yours very truly,

J. Emory Smith, Jr.
State Attorney

Footnotes

- 1 State Board of Education Rule 43-142, Code of Laws of South Carolina (1976), provides, in part, that accredited elementary, middle, and high schools operate a minimum of 180 days 'for all students.' Any conflict between this rule and Act No. 199 would have to be resolved in favor of the Act.

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