

1979 WL 43101 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 5, 1979

\*1 J. Wright Horton, Esquire  
Horton, Drawdy, Hagins, Ward & Blakley, P.A.  
Post Office Box 10167 F.S.  
Greenville, South Carolina 29603

Dear Mr. Horton:

As an attorney for the School District of Greenville County you have requested an opinion of this Office as to the authority of the District's Board of Trustees to establish for themselves a per diem and mileage allowance for attending Board meetings.

[Section 59-1-350 of the Code of Laws of South Carolina \(1976\)](#) states in part, as follows:

Each member of the [county board of education or board of trustees] may receive a per diem for attendance at board meetings and may be paid mileage to and from such meetings. No member may receive per diem and mileage unless in actual attendance upon a meeting of the board.

This section has not been construed by the Supreme Court of this State and, apparently, has not previously been the subject of an opinion of this Office. While it states that trustees may receive per diem and mileage, it does not expressly authorize any body to set those items.

The following rule of construction is applicable here:

A statute is a solemn enactment of the State acting through its legislature and it must be assumed that this process achieves an effective and operative result. It cannot be presumed that the legislature would do a futile thing. Vol. 2A, Sutherland Statutory Construction § 45.12.

Thus, the legislature must have intended for some authority to set per diem or mileage under [§ 59-1-350](#). The legislature must not have intended for itself to be that body which would set per diem and mileage because it failed to specify amounts for these items in the statute. Giving itself statutory authority to set these amounts by another statute at a future time would be an unnecessary and futile act.

Because boards of trustees of the school districts have broad powers over district affairs under § 59-19-10, et seq. of the Code (see also [§§ 59-20-60 and 59-20-80 of the Code](#), as amended), they apparently were intended by the legislature to set per diem and mileage for their members under [§ 59-1-350](#). The language of [§ 59-1-350](#) certainly permits this interpretation.

[Section 59-1-350](#) establishes no guidelines as to the amount of per diem and mileage; however, I refer you to the following definitions of those terms:

Generally the term 'per diem,' as used in connection with compensation, wages or salary, means pay for a day's services . . . [Scroggie v. Scarborough](#), 162 S.C. 218, 160 S.E. 596 (1931).

Mileage. Allowance for traveling expenses at certain rate per mile. [emphasis added] [Black's Law Dictionary](#), 1143 (4th Ed. 1968).

In connection with the above questions, I refer you also to the Department of Education's 'School Board Compensation Study.' It shows that the legislature has set per diem and mileage for board members in some districts and counties. No opinion is expressed herein as to whether such authorization would be desirable for the Greenville County School District.

\*2 If I can be of further assistance to you, please do not hesitate to contact me.

Yours very truly,

J. Emory Smith, Jr.

State Attorney

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