

1978 S.C. Op. Atty. Gen. 143 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-111, 1978 WL 22580

Office of the Attorney General

State of South Carolina

Opinion No. 78-111

June 8, 1978

***1 SUBJECT: The Hold Harmless clause in the Education Finance Act.**

The proviso in the 'hold harmless' clause of Section 5(1) of the Finance Act sets an additional minimum or floor of state funding.

TO: Mr. Ray W. Burnette
Deputy Superintendent
Department of Education

QUESTION:

What is the proper method of computing the minimum level of state contribution to a district under the so-called 'hold harmless' clause of the Education Finance Act?

STATUTE:

[Section 59-20-50\(5\)\(1\) of the Code](#) (Section 5(1) of the Education Finance Act.)

DISCUSSION:

The Report of the Governor's Committee for the equalization of Educational Finance states at page 25:

'Some school districts may be getting now, under the existing financial plan, more money from the state than they will be entitled to receive under the proposed equalized foundation plan which it is implemented. The committee has agreed that any proposed reform measures would not do harm to any school district's present program. Consequently, it is proposed that a 'hold harmless' clause be a part of the overall plan in order to prevent any child's education from being harmed by the new plan of finance. On this basis, those districts receiving from the state more money in terms of 1975 dollar equivalents than the new plan allocates, will continue to receive the same amount again in 1975 dollar equivalents, * * * until * * * the proposed program overcomes or catches up with the amount those districts now receive'.

The 'hold harmless' clause is contained in Section 5(1) of the Act and reads as follows:

'Notwithstanding computation prescribed in Section 4 of this Act, the level of state contributions to each district shall not be reduced to a per-pupil level of foundation program funds below that per-pupil level of state funding of programs for the fiscal year prior to implementation of this Act which will be incorporated in the foundation program'.

A proviso was added to the original Section 5 of the Act by two amendments. The first sentence of the proviso was added in the House, the second sentence in the Senate. See 1977 House and Senate Journals at pp. 1264 and 1456, respectively. Together the amendments read:

'Provided, no district shall receive annually an increase in state funds less than two-thirds of the inflationary adjustment in the base student cost specified in Section 4(1)(b). This increase shall be computed annually over and above the amount actually received from the State for the foundation program in the prior fiscal year'.

The proviso in our judgment adds a second 'hold harmless' safeguard which considers the effect of inflation. It sets a second floor or minimum of state funding based on actual receipts of the prior year. We find nothing in the proviso relating to per-pupil funding. The second floor considers only total funding of the prior year and inflation. See [Gasque v. Nates](#), 191 S. C. 271, 2 S. E. 2d 36, and other cases cited at 17 West's South Carolina Digest, Statutes, Section 228 on the effect of provisos.

*2 The following example may be helpful: Assume that school district X received \$950,000 from the State during the 1977–1978 school year for 'foundation programs', that is, programs which in the future will be funded under the Finance Act. Also assume that for 1977–1978 the district had 950 pupils. For the 1978–1979 school year, (first year under the Act), the district size has grown to 1,000 pupils and the computations made pursuant to Section 4 of the Act show a level of proposed state funding of \$990,000. Also assume that the inflationary adjustment will be 8% for 1978–1979.

The level of state funding under the 'hold harmless' clause and the proviso will be the greater of three figures.

(1) \$990,000 which is the proposed funding under Section 4 of the Finance Act.

(2) 1,000,000 which is $1,000 \times \$950,000 / 950$ proposed funding under the 'hold harmless' clause.

(3) \$1,000,666 is $\$950,000 + (\frac{2}{3}) (.08) (950,000)$ proposed funding under the proviso.

CONCLUSION:

The proviso in the 'hold harmless' clause of the Section 5(1) of the Finance Act sets an additional minimum or floor of state funding.

John C. von Lehe
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