

1978 WL 35044 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 16, 1978

*1 Mr. R. W. Burnette
Deputy Superintendent
Division of Finance & Operations
Rutledge Building
1429 Senate Street
Columbia, SC 29201

Dear Mr. Burnette:

This is in reply to your request for an opinion from this Office whether [§ 59-67-420 of the Code of Laws of South Carolina](#), 1976, as amended by H.-3881, Part II, Section 6A (The General Appropriations Act for 1978-79) requires the Department of Education to use funds appropriated under the Act to experimental programs or to provide transportation on a state wide basis within the limits of the appropriation.

[§ 59-67-420](#) as amended by H.-3881, Part II, Section 6A (The General Appropriations Act of 1978-79) provides in part: To Allow Transportation of Students Living within One and One-half Miles of Their Schools under Certain Conditions. [Section 59-67-420 of the 1976 Code](#), as last amended by Act 85 of 1977, is further amended by adding at the end: 'Notwithstanding the policy stated in the above paragraph, the State may assume the obligation of transporting students living within one and one-half miles of their schools if a local school district applies in writing to the State Department of Education furnishing information that such transportation is necessary for the health and safety of the children involved. After examining the information, the State Department shall render a decision on each application based on the location of the schools in relation to students homes, the traffic patterns on adjacent roads, the existence of sidewalks, and such other factors as may be deemed pertinent.'

The legislature has appropriated \$200,000 to finance the implementation of the Act for the current fiscal year.

When terms of a statute are clear and not ambiguous, there is no room for construction and the statutes must be accorded their literal meaning. [McMillan Feed Mills, Inc. of South Carolina v. May](#), 265 S.C. 500, 220 S.E. 2d 221 (1975). Ordinarily, statutory use of the word 'shall' is mandatory or imperative, while use of the word 'may' is permissive or directory. Absent clear indication of legislative intent in the purpose and context of the statute compelling a contrary understanding, courts will so construe these terms. [Knox v. Krause](#), 377 A.2d 960, 961, 152 N.J. Super. 278. See 1960-61 Op. Atty. Gen. 247.

Under the terms of the Act, any school district may apply to the Department of Education for funds to implement a system of transportation of students within one and one-half miles of their local school if they furnish information that such transportation is necessary for the health and safety of the children involved. Upon receipt of all the applications, the Department of Education shall consider each and every application based upon the location of the schools in relation to the students homes, the traffic pattern on adjacent roads, the existence of sidewalks and such other factors as may be deemed pertinent. It is the opinion of this Office that within the confines of the statute, the Department of Education can implement the program in as many school districts as it chooses, subject to the practical limitations of a \$200,000 budget.

*2 Please do not hesitate to contact me if I can be of further assistance.

Sincerely

Frank H. DuRant
Assistant Attorney General

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