ALAN WILSON
ATTORNEY GENERAL

April 25, 2017

The Honorable Raye Felder, Member
South Carolina House of Representatives, District No. 26
414D Blatt Bldg.
Columbia, SC 29201

Dear Representative Felder:

Attorney General Alan Wilson has referred your letter to the Opinions section regarding the impact of the 2016 South Carolina – North Carolina boundary line clarification on students' ability to enroll in the York County School District. The questions present in your letter are as follows:

> Last year the South Carolina Legislature passed 2016 Act No. 270, which clarified the boundary line between North Carolina and South Carolina. As a result, some individuals who previously lived in South Carolina now live in North Carolina and some individuals who previously lived in North Carolina now live in South Carolina. Other properties have been bisected by the revised state line described in this Act.
>
> I respectfully request an opinion from your office reviewing S.C. Code Ann. §§ 59-63-30, 59-63-45, and 59-112-150 regarding properties bisected by the new state line with North Carolina. These state statutes purport to allow any child who resided with a parent or legal guardian who is a resident of such school district to attend public schools of that district without charge. Also, these statutes appear to allow a child who owns real estate, worth $300, or more, in a school district to attend public schools in that district without charge. However, the York County School District is apparently claiming that children residing with their parents who own a **bisected** property, **or** children who own a bisected property in the district **must** pay nonresident school tuition.
>
> My questions are:
>
> 1. If the parents or legal guardians of a child own a tract of land bisected by the South Carolina/North Carolina state line, shouldn't their child be able [to] attend school in a South Carolina district **without charge** as set forth in in S.C. Code Ann. §§ 59-63-30 and also be considered a resident student?
>
> 2. Is mere bisected property ownership in that school district sufficient to prove residency or must it be improved property?
>
> 3. If a child owns bisected real estate with the South Carolina portion of it worth more than $300 that is in the district, shouldn't the child be able to attend public school in that school district without charge pursuant to S.C. Code. Ann. § 59-63-30 and also be considered a resident student?

Law/Analysis

1. Residents on property which is determined to be located in North Carolina as a result of the boundary clarification as of January 1, 2017

As stated in your letter, the General Assembly passed 2016 Act No. 270 ("the Act") which clarified the boundary between North Carolina and South Carolina and developed statutory procedures for the resulting impacts to taxes, deed recording, vehicle registration, mortgages, school attendance, and in-state tuition rates. In relevant part, Section 21 of the Act amended Article 5, Chapter 63, Title 59 of the 1976 Code of Laws of South Carolina by adding S.C. Code Ann. § 59-63-550. This statute provides that the children of parents or legal guardians who are deemed to reside in North Carolina instead of South Carolina as a result of the boundary clarification contained in the Act may enroll in the school district in which the residence was believed to be located prior to passage of the Act. Section 59-63-550 states as follows:

> (A) Upon the effective date of the amendments to Section 1-1-10 which are effective January 1, 2017, enacting the clarified North Carolina--South Carolina boundary, persons residing on property which is determined to be located in North Carolina as a result of the boundary clarification, may enroll their children residing with them in the South Carolina district in which that property was previously believed to be located or in the statewide public charter school district, without charge, as long as the family maintains residence on that same property. For the purpose of this section regarding the boundary clarification, the word "children" includes those children who are residing with their legal guardians whose property is determined to be located in North Carolina as a result of the boundary clarification.
>
> (B) This section only applies to those persons residing on the property as of January 1, 2017, and their children who reside with them. Once those persons move from the property or no longer have children at home who are attending or will attend schools in the South Carolina K-12 public education system, then this provision no longer applies to that property. A district may draw down South Carolina state and federal funding for students enrolled under this section.
>
> (C) This section does not require a former South Carolina resident to continue enrollment of their children in school in South Carolina.

S.C. Code Ann. § 59-63-550 (emphasis added).

In researching this opinion request, we have been unable to locate opinions issued by our state courts interpreting Section 59-63-550. As a matter of first impression, we turn to the principles of statutory interpretation to guide our analysis. The primary rule of statutory interpretation requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Further, "[a] statute as a whole must receive a practical, reasonable and

fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), reh'g denied (Aug. 5, 2015). Where statutes deal with the same subject matter, it is well established that they "are in *pari materia* and must be construed together, if possible, to produce a single, harmonious result." Denman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468 (2010) (quoting Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000)); see also Busby v. State Farm Mut. Auto. Ins. Co., 280 S.C. 330, 335, 312 S.E.2d 716, 719 (Ct. App. 1984) ("The sections here are part of the same statute, thereby presenting an even stronger case that they be construed together and reconciled.").

The plain language of Section 59-63-550 states that individuals who reside on property which was believed to be in South Carolina, but, as a result of the Act clarifying the North Carolina—South Carolina boundary, are determined to be in North Carolina "may enroll their children residing with them in the South Carolina district in which that property was previously believed to be located or in the statewide public charter school district, without charge, as long as the family maintains residence on that same property." S.C. Code Ann. § 59-63-550(A). The statute unambiguously expresses the Legislature's intent to allow children residing "with their legal guardians" in such circumstance to continue attending or even to begin enrollment for the first time "without charge" within the school district where the property was believed to be located. Id. The statute makes clear that it only applies to the "persons residing on the property as of January 1, 2017, and their children who reside with them." S.C. Code Ann. § 59-63-550(B). Persons who become residents on such property after January 1, 2017 would not be able to enroll their children under the provisions of this statute.

2. Persons who become residents or owners of property which is determined to be partially located in North Carolina as a result of the boundary clarification subsequent to January 1, 2017

Your letter, however, raises questions about a child's ability to attend public school without charge based on either property ownership or residency without reference to whether such status has been maintained since January 1, 2017. Therefore, we next address how such children are qualified to attend public school within a school district when Section 59-63-550 is inapplicable.

Article XI, Section 3 of the South Carolina Constitution states, "The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable." S.C. Const. art. XI, § 3. In accordance with this mandate, Section 59-63-30 lists the qualifications for attending public schools within a school district "without charge" as follows:

> Children within the ages prescribed by § 59-63-20 shall be entitled to attend the public schools of any school district, without charge, only if qualified under the following provisions of this section:
>
> (a) Such child resides with its parent or legal guardian;
>
> (b) The parent or legal guardian, with whom the child resides, is a resident of such school district; or

> (c) The child owns real estate in the district having an assessed value of three hundred dollars or more; and
> (d) The child has maintained a satisfactory scholastic record in accordance with scholastic standards of achievement prescribed by the trustees pursuant to § 59-19-90; and
>
> (e) The child has not been guilty of infraction of the rules of conduct promulgated by the trustees of such school district pursuant to § 59-19-90.

S.C. Code Ann. § 59-63-30.[1]

However, in contrast to the statutory grant for attendance at public school without charge in Section 59-63-30, Section 59-63-45(A) provides a payment formula for nonresident children attending public school in a school district which they are otherwise qualified to attend. The payment formula is as follows:

> Notwithstanding the provisions of this chapter, a nonresident child otherwise meeting the enrollment requirements of this chapter may attend a school in a school district which he is otherwise qualified to attend if the person responsible for educating the child pays an amount equal to the prior year's local revenue per child raised by the millage levied for school district operations and debt service reduced by school taxes on real property owned by the child paid to the school district in which he is enrolled. The district may waive all or a portion of the payment required by this section.

S.C. Code Ann. § 59-63-45(A).

In Storm M.H. ex rel. McSwain v. Charleston County Bd. Of Trustees, 400 S.C. 478, 735 S.E.2d 492 (2012), the South Carolina Supreme Court addressed the conflict between the payment formula in Section 59-63-45 and the qualifications regarding school attendance "without charge" in Section 59-63-30. The Court held that S.C. Code Ann. § 59-63-30(c) allowed a student who did not reside within the Charleston County School District (CCSD) but did own property located in the district to attend a CCSD magnet school. CCSD had a "resident only" criterion for the magnet school which the Court stated "runs afoul of Section 59–63–30 because any child meeting the threshold established by this provision, either as a resident or a property owner of the subject school district, is entitled to attend that district's schools." Storm M.H. ex rel. McSwain, 400 S.C. at 489, 735 S.E.2d at 498. The Court explained as follows:

> By its plain terms, section 59–63–30 entitles a child to attend the public schools of any school district if the child: (1) resides with his or her parent or legal guardian, and that parent or legal guardian is a resident of the school district ***or*** the child owns real estate in the district having an assessed value of at least three hundred dollars; and (2) the child has maintained a satisfactory scholastic record and not been guilty of infraction of the rules of conduct.
> ...

[1] See S.C. Code Ann. § 59-63-31 regarding additional qualifications for attendance at public school or a particular public school.

> [W]e are constrained to interpret the unambiguous language of section 59–63–30. Thus, a child who owns real estate in the district having an assessed value of three hundred dollars or more is entitled to attend that district's schools, just as a resident child.

Storm M.H. ex rel. McSwain, 400 S.C. at 489–92, 735 S.E.2d at 498-500. Nonetheless, the Court held that the parent or legal guardian of a nonresident child may be required to pay an amount to reimburse the school district for enrolling as a nonresident.

> [T]he payment of tuition is a secondary requirement that may be imposed after a nonresident child, who is statutorily eligible to attend the public schools of another school district, is granted admission to a particular school. In the event that occurs, the school district may require the nonresident child's parent or legal guardian to reimburse the district for the assessed costs of educating that child to the extent that child's property taxes do not cover such costs.

Storm M.H. ex rel. McSwain, 400 S.C. at 492–93, 735 S.E.2d at 500. The Court explained its reasoning as follows:

> Although we are cognizant of the conflict between the "without charge" language in section 59–63–30 and the provisions of section 59–63–45 that require reimbursement for a child attending another school district, we believe section 59–63–45 is controlling as it was enacted in 1996, thirty-four years after section 59–63–30. See Williams v. Town of Hilton Head, 311 S.C. 417, 429 S.E.2d 802 (1993) (recognizing that where it is not possible to harmonize two statutes, the later legislation supersedes the earlier enactment).

Storm M.H. ex rel. McSwain, 400 S.C. 478, 493 n.11, 735 S.E.2d 492, 500 n.11 (2012).

While a child's parent or legal guardian may be required to reimburse the school district as a nonresident property owner by Section 59-63-45(A), it is this Office's opinion that the children of persons who have resided on property impacted by the boundary clarification since January 1, 2017 would not be subject to such a reimbursement requirement. Under the rule of statutory construction applied by the court in Storm M.H. ex rel. McSwain that later legislation supersedes an earlier enactment, the right to attend public school within a school district granted by Section 59-63-550 "without charge" supersedes Section 59-63-45 as the later enactment.[2] Please note, however, that the Storm M.H. ex rel. McSwain Court's holding that the reimbursement requirement in Section 59-63-45(A) supersedes the "without charge" language in Section 59-63-30(c) continues to control where a nonresident child attends public school based on property ownership within that school district.[3]

---

[2] Section 59-63-45 was enacted in 1996 by Act No. 389, § 1.

[3] This Office's March 7, 1983 opinion addressed whether children whose parents are not South Carolina residents may attend public school in South Carolina free of charge under 59-63-30(c) if they cross the border into the state on a daily basis to attend school. In that opinion, this Office opined that 59-63-30(c) would not apply to such children whose parents were residents of another state as follows:

> Because § 59-63-30 indicates no intention to extend a free education to children other than those 'in the state' under Art. XI § 3, this statute's scope is no greater than that of the constitutional provision. Sutherland, supra. The plain meaning of 'children in the state' under the provision appears to be children who are to some degree physically located in South Carolina. Sutherland, Vol. 2A § 46.01, et seq. Whether actual residence is required need not be decided here as the

Your letter raises additional questions regarding which school district persons who own or reside on property which is bisected by the North Carolina - South Carolina border as a result of the Act are qualified to attend. The determination of which school district a property is located in or which school district a person is a resident of are questions of fact. Matthews v. Lynch, 110 S.C. 63, 96 S.E. 494, 496 (1918) ("Plaintiffs assign error in his decree in two particulars: First, in finding that they are residents of school district No. 39; ... [this] exception presents only questions of fact."). Such a factual inquiry is beyond the authority of this Office in issuing an opinion. See Op. S.C. Atty. Gen., 2006 WL 1207271 (April 4, 2006) ("Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions").

While this Office cannot state in which school district a person residing on a bisected property would be a resident, we will provide relevant legal authority which a court could refer to as guidance. This Office has previously opined that for purposes of determining which school district a person resides, "'residence' means that place where a person actually lives or has his home. Jernigan v. Capps, 187 Va. 73, 45 S.E.(2d) 886. It is that place where one is habitually present and to which having departed therefrom, he intends to return. Wray v. Wray, 149 Neb. 376, 31 N.W.(2d) 228. See also: 37 WORDS AND PHRASES, Residence at 317." 1970 S.C. Op. Att'y Gen. 39 (1970). In Dukes v. Redmond, 357 S.C. 454, 593 S.E.2d 606 (2004), the South Carolina Supreme Court examined a similar question regarding how to determine residency for eligibility to vote in a mayoral election when voters resided on contiguous lots bisected by the municipal boundary. The Court's summary of the facts and holding are as follows:

> Ricky and Danette Foshee voted in the mayoral election and testified at the protest hearing. They are husband and wife and reside together. The Foshees own two contiguous lots, one in the city on which they pay city taxes, and one outside the city on which they do not pay city taxes. Their actual residence is located on the back lot which is outside the city and comprises about four-fifths of the total property. The front lot, which is in the city, borders on the road and is about fifty feet deep. The Foshees' driveway extends from the road to the residence on the back lot. The Board found that because the Foshees' contiguous lots had a single residential use, the Foshees were city residents. Dukes contends this was error.
>
> ...
>
> The issue of a voter's residence when his actual dwelling is on the part of his property outside the voting district is a novel one. We agree with the decision of the New York court in In re: Davy, 281 A.D. 137, 120 N.Y.S.2d 450 (N.Y.App.Div.1952), that a person's residence is the part of his property on which the dwelling is actually located.

> provision indicates no intention to apply to a physical contact so fleeting as a daily border crossing for school attendance purposes. Therefore, because the scope of § 59-63-30(c) is not greater than that of Art. XI § 3, the border crossing children are excluded from the statute's property ownership provisions.

Op. S.C. Atty. Gen., 1983 WL 181780 (March 7, 1983). Accordingly, it is this Office's opinion that Section 59-63-30(C) does not apply to persons who become residents of property determined to be located in North Carolina as a result of the Act subsequent to January 1, 2017. Children of such persons would not be entitled to attend public school within a South Carolina school district "without charge" under this statute.

> Because the Foshees' actual residence is outside the city limits, they were not eligible to vote in the mayoral election.

Dukes v. Redmond, 357 S.C. 454, 457-458, 593 S.E.2d 606, 608 (2004). Although the Court's analysis regarding residency in Dukes related to voter eligibility, the analysis is likely to be applied by a court to determine whether a person's residence is within a school district when their property is divided by a boundary line. Consistent with Duke and our prior opinions, it is this Office's opinion that whether a person's residence is within a school district when he owns property which overlaps such a district's boundary line is likely to be determined according to where his home is located on such property.

With these principles in mind, we turn to the specific questions presented in your letter.

1. If the parents or legal guardians of a child own a tract of land bisected by the South Carolina/North Carolina state line, shouldn't their child be able [to] attend school in a South Carolina district **without charge** as set forth in in S.C. Code Ann. § 59-63-30 and also be considered a resident student?

As discussed above, the South Carolina Supreme Court held in Storm M.H. ex rel. McSwain that S.C. Code Ann § 59-63-30 allows a child to attend public school within a particular school district under two different scenarios. The two scenarios are if the child "resides with his or her parent or legal guardian, and that parent or legal guardian is a resident of the school district ***or*** the child owns real estate in the district having an assessed value of at least three hundred dollars." Storm M.H. ex rel. McSwain, 400 S.C. at 489–92, 735 S.E.2d at 498-500 (emphasis in original). If the child owns land within the school district which has an assessed value of at least three hundred dollars, the child would be eligible to attend school within the school district if they met the additional qualifications in S.C. Code Ann § 59-63-30. Whether the child's parent or legal guardian owns property is not determinative under the statute. Further, the Court held in Storm M.H. ex rel. McSwain that S.C. Code Ann § 59-63-45 which establishes a waivable reimbursement payment for nonresident children to attend school within a school district to attend supersedes S.C. Code Ann § 59-63-30(c). Id. Therefore, even where the child owns property within a school district which has an assessed value of three hundred dollars, if his parent or legal guardian is not also a resident within the school district, the parent or legal guardian is required to make payment as directed by the formula in S.C. Code Ann § 59-63-45(A) to the school district. The school district can waive all or a portion of such payment.

However, if since January 1, 2017 the child's parent or legal guardian has been residing on property which was believed to be in South Carolina and 2016 Act No. 270 clarified such property to be in North Carolina, such child may enroll in the South Carolina school district in which that property was previously believed to be located or in the statewide charter school district without charge, as long as the family maintains residence on that same property. S.C. Code Ann § 59-63-550.

2. Is mere bisected property ownership in that school district sufficient to prove residency or must it be improved property?

As discussed above, the determination of whether a person is a resident of a particular school district is a question of fact which is beyond the scope of an opinion of this Office. Op. S.C. Atty. Gen., 2006 WL 1207271 (April 4, 2006). It is this Office's opinion that a court will likely determine whether a person who resides on property which is bisected by the South Carolina border is a resident of a South

Carolina school district according "the part of his property on which the dwelling is actually located." Dukes, 357 S.C. at 458, 593 S.E.2d at 608. However, a child does not have to be a resident to attend public school within a school district. If the child owns land within the school district which has an assessed value of at least three hundred dollars, the child would be eligible to attend school within the school district if they met the additional qualifications in S.C. Code Ann § 59-63-30. Section 59-63-30(c) does not require such property to be improved or list any qualification on the property other than that it must be "in the district" and have "an assessed value of three hundred dollars or more." Please note that the parent or legal guardian of a child who attends public school in a school district under the Section 59-63-30(c) may be required to make a waivable reimbursement payment as described in Section 59-63-45. See Storm M.H. ex rel. McSwain v. Charleston County Bd. Of Trustees, 400 S.C. 478, 735 S.E.2d 492 (2012).

3. If a child owns bisected real estate with the South Carolina portion of it worth more than $300 that is in the district, shouldn't the child be able to attend public school in that school district without charge pursuant to S.C. Code. Ann. § 59-63-30 and also be considered a resident student?

Please refer to the responses to questions one and two above.

Conclusion

We hope that the guidance provided above will assist you, your constituents, and York County School District in determining which students are qualified to attend the public schools within its jurisdiction without charge or subject to a waivable reimbursement payment. This Office is, however, only issuing a legal opinion based on the current law at this time and the information as provided to us. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20 (1976 Code, as amended). If it is later determined otherwise, or if you have any further questions or issues, please let us know.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General