ALAN WILSON
ATTORNEY GENERAL

October 31, 2017

The Honorable Molly M. Spearman
Superintendent
South Carolina Department of Education
Rutledge Building, 1429 Senate Street
Columbia, SC 29201

Dear Superintendent Spearman:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter states the following:

> In a March 30, 2015 letter the South Carolina Department of Education (SCDE) sought an opinion on two issues that related to Section 59-19-350 (Schools of Choice). Your office issued an opinion on July 9, 2015. In addition, your office issued a follow-up opinion on May 31, 2016....
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> It has come to my attention that between your two opinions, opinions were sought on this issue from Legislative Council and the Senate. The SCDE is unsure of next steps as a school district has sought guidance on establishing additional schools of choice in its district.
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> I am requesting an opinion on whether your 2015 and 2016 opinions have changed in light of Section 2-7-30(A) as outlined in the two 2016 opinions from Legislative Council and the Senate.

Both of the opinions from Legislative Council and the Senate cite S.C. Code Ann. § 2-7-30(A) in support of their conclusions. In relevant part, the Senate opinion reads as follows:

> In developing the opinion that the language "a school of choice" should have a singular, rather than a plural meaning, the Attorney General's Office relied on a treatise on statutory construction. *See* 2A Sutherland Statutory Construction § 47:34 *Singular and plural numbers* (7th ed. 2014). Such reliance would have been appropriate in the absence of anything to the contrary in South Carolina law. The Attorney General's Office, however, failed to cite Section 2-7-30 of the South Carolina Code, which provides that

> (A) The words "person" and "party" and *any other word importing the singular number* used in any act or joint resolution shall be held to include the plural and to include firms, companies, associations, and corporations and all words in the plural shall apply also to the singular in all cases in which the spirit and intent of the act or joint resolution may require it. All words in an act or joint resolution importing the masculine gender shall apply to females also and words in the feminine gender shall apply to males. And all words importing the present tense shall apply to the future also.

S.C. Code Ann. § 2-7-30(A)(emphasis added).

Pursuant to S.C. Code Section 2-7-30(A), the language "a school of choice" in S.C. Code Section 59-19-350(A), includes a school of choice, or schools of choice, depending on the intent of the district. Thus, it is my opinion that the local school districts in your district may opt to create more than one school of choice.

Accordingly, we revisit the analysis and conclusions of our July 9, 2015 and May 31, 2016 opinions to determine their continued validity.

## Law/Analysis

This Office reaffirms our July 9, 2015 and May 31, 2016 opinions which concluded that a court would likely find S.C. Code Ann. § 59-19-350 permits the local school district boards of trustees of this State to create one school of choice within each district. See Ops. S.C. Atty. Gen., 2015 WL 4497736 (July 9, 2015); 2016 WL ___ (May 31, 2016). This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law. Ops. S.C. Atty. Gen., 2017 WL 3438532 (July 27, 2017); 2013 WL 6516330 (November 25, 2013); 2013 WL 3762706 (July 1, 2013); 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Your letter does not cite a change to S.C. Code Ann. §§ 2-7-30, 59-19-350, or other relevant legal authority since this Office issued our opinion. Further, our research has not uncovered such a change.[1] Therefore, to reverse or modify our prior opinions, we will review their analysis and conclusions for clear error.

[1] "The absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views [ex]pressed therein were consistent with the legislative intent." Op. S.C. Att'y Gen., 2005 WL 2250210 (September 8, 2005) (citing Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977)).

S.C. Code Ann. § 59-19-350, which is entitled "Schools of choice exempt from state laws and regulations," reads as follows:

> (A) A local school district board of trustees of this State desirous of creating an avenue for new, innovative, and more flexible ways of educating children within their district, may create a school of choice within the district that is exempt from state statutes which govern other schools in the district and regulations promulgated by the State Board of Education. To achieve the status of exemption from specific statutes and regulations, the local board of trustees, at a public meeting, shall identify specific statutes and regulations which will be considered for exemption. The exemption may be granted by the governing board of the district only if there is a two-thirds affirmative vote of the board for each exemption and the proposed exemption is approved by the State Board of Education.

S.C. Code Ann. § 59-19-350(A) (emphasis added). This Office's July 9, 2015 opinion interpreted this statute as follows:

> We believe the plain language of S.C. Code Ann. § 59-19-350 (Supp. 2014) is unambiguous and evidences the Legislature's intent of providing local school districts with requirements and procedures for creating a new, innovative, and flexible way of educating children. This intent is expressed in the Act's title as well as in the body of the statute itself, both providing that: "[a] local school district board of trustees of this State desirous of creating an avenue for new, innovative, and more flexible ways of educating children within their district, may create a school of choice within the district that is exempt from state statutes which govern other schools in the district and regulations promulgated by the State Board of Education." S.C. Code Ann. § 59-19-350(A); Act No. 164, 2012 S.C. Acts 1661, 1664 (emphasis added).
>
> Looking only to the plain language of the S.C. Code Ann. § 59-19-350 (Supp. 2014), we believe the legislature's intent of providing "an avenue" for "new, innovative, and more flexible ways of educating children" is effectuated by allowing a district to create "a school of choice." In other words, we believe it was the legislature's intent that singular meaning be given to "a school of choice" within the phrase "[a] local school district board of trustees ... may create a school of choice ...." S.C. Code Ann. § 59-19-350 (Supp. 2014). Such interpretation does not produce an absurd result.
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> This conclusion is further strengthened by the legislature's choice of the singular tense of the word "avenue," in providing districts with "an avenue for

> new, innovative, and more flexible ways of educating children ...." Id. Furthermore, in characterizing between "a school of choice" and "other schools in the district" a clear distinction is made between the use of singular tense in the former and plural tense in the later, which we believe must be interpreted as intentional. Id. (emphasis added).

Op. S.C. Atty. Gen., 2015 WL 4497736, at *3 (July 9, 2015) (footnotes omitted). This Office's May 31, 2016 opinion reaffirms this conclusion. Op. S.C. Atty. Gen., 2016 WL ___ (May 31, 2016).

The opinions from Legislative Council and the Senate found this conclusion erroneous due to the lack of discussion of S.C. Code Ann. § 2-7-30(A). However, the conclusions reached in this Office's two opinions do implicitly address the issues raised by S.C. Code Ann. § 2-7-30(A). The Legislative Council and the Senate opinions emphasize "any other word importing the singular number used in any act or joint resolution shall be held to include the plural." Id. However, the statute continues to say that a singular word in a statute includes the plural when "the spirit and intent of the act or joint resolution may require it." Id. This Office's opinions did in fact apply a plural reading to "[a] local school district board of trustees," while declining to apply a plural reading to "a school of choice within the district." Op. S.C. Atty. Gen., 2015 WL 4497736, at *3 (July 9, 2015). The opinions' interpretation effectively read "[a] local school district board of trustees" as "each local school district board of trustees." If "[a] local school district board of trustees" was read literally, Section 59-19-350(A) would permit only a single school district in the entire State to create one school of choice. However, the opinion found the spirit and intent of the act was to "provid[e] local school districts with requirements and procedures for creating a new, innovative, and flexible way of educating children." Further, the opinions found that the General Assembly made a clear choice in "the use of singular tense in [a school of choice] and plural tense in [other schools]." Even though the opinions did not cite to Sections 2-7-30(A), they clearly addressed whether "the spirit and intent" of Section 59-19-350(A) requires a plural reading of "a school of choice within the district" and found this not to be the case. To read "a school of choice within the district" as the opinions from Legislative Council and the Senate suggest would allow an unbounded amount of schools to operate "exempt from state statutes which govern other schools ... depending on the intent of the district." Such a reading contradicts the general rule that exceptions to statutes and regulations should be strictly construed.[2] Therefore, this Office does not find clear error in our prior opinions' analysis and reaffirms it is our opinion that a court would likely find S.C. Code Ann. § 59-19-350 permits the local school district boards of trustees of this State to create one school of choice within each district.

[2] Op. S.C. Atty. Gen., 1975 WL 29638, at *1 (S.C.A.G. Mar. 31, 1975) ("'Exceptions in a statute as a general rule, should be strictly, but reasonably construed, in conformity with the purpose and meaning of the statute.' 82 CJS Statutes Section 382. All doubts, involving a general provision and an exception, should be resolved in favor of the general provision rather than the exception.").

**Conclusion**

This Office reaffirms our July 9, 2015 and May 31, 2016 opinions' conclusion that a court would likely find S.C. Code Ann. § 59-19-350 permits the local school district boards of trustees of this State to create one school of choice within each district. 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