



ALAN WILSON
ATTORNEY GENERAL

February 8, 2021

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Dear Mr. Wilson:

We understand your firm represents the James Island Charter High School (“JICHHS”) and would like to request an opinion on its behalf concerning a fee imposed by the Charleston County School District (“CCSD”). You informed us that JICHHS is sponsored by CCSD, not the South Carolina Public Charter School District. According to your letter,

In October, 2020 a Committee of the whole meeting of CCSD proposed consideration of a “Two Percent Administrative Fee on State Appropriations to Charter Schools.” The agenda item subsequently came before the CCSD Board of Trustees later in October, on an “action” agenda, and was adopted without discussion. Although the CCSD “accepted” the item, what precisely was adopted is unclear, but the subject of the motion entitled “Two Percent Administrative Fee on State Appropriations of Charter Schools” was as follows:

“Motion to recommend that, in the District FY22 budget, the state allowed two percent administration fee to be applied to state appropriations to charter schools, except for Education Improvement Act categorized funds.”

Accordingly, you seek guidance as to “the ability of CCSD as sponsor to retain 2% of the ‘total state appropriations.’”

Law/Analysis

The enabling legislation for charter schools is contained in chapter 40 of title 59 of the South Carolina Code, otherwise known as the “South Carolina Charter Schools Act of 1996” (“Charter Schools Act”). S.C. Code Ann. §§ 59-40-10 et seq. (2020 & Supp. 2020). As you mentioned in your letter, section 59-40-55 of the South Carolina Code (2020), titled “Sponsor powers and duties; retention of funds,” provides as follows in subsection (C):

The South Carolina Public Charter School District may retain no more than two percent of the total state appropriations for each charter school it authorizes to

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cover the costs for overseeing its charter schools. The sponsor's administrative fee does not include costs incurred in delivering services that a charter school may purchase at its discretion from the sponsor. The sponsor's fee is not applicable to federal money or grants received by the charter school. The sponsor shall use its funding provided pursuant to this section exclusively for the purpose of fulfilling sponsor obligations in accordance with this chapter.

S.C. Code Ann. § 59-40-55(C). You question whether this provision allows the CCSD, as a sponsor, to retain two-percent of the state appropriations to JICHHS or whether the Legislature intended for this provision to apply only to schools sponsored by the South Carolina Public Charter School District ("SCPCSD").

To answer your question, we must consider the rules of statutory interpretation, the primary of which is to ascertain the intent of the Legislature." Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996).

In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole. Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning.

Id. (citations omitted).

Section 59-40-55(C) clearly allows the SCPCSD to collect up to a two percent fee, but it is not entirely clear whether a sponsor other than the SCPCSD can collect such fees as a percentage of state appropriations. As you note in your letter, the first sentence allowing for the collection of a two-percent fee specifically states it applies to the SCPCSD, but the subsequent sentences describing what the fee may be used for and what revenue it may be imposed on simply refers to a "sponsor." Section 59-40-40(4) of the South Carolina Code (2020) defines "sponsor" for purposes of the Charter Schools Act as "means the South Carolina Public Charter School District Board of Trustees, the local school board of trustees in which the charter school is to be located, as provided by law, a public institution of higher learning as defined in Section 59-103-5, or an independent institution of higher learning as defined in Section 59-113-50, from which the charter school applicant requested its charter and which granted approval for the charter school's existence." Based on this definition, a local school district could be considered a sponsor, but we do not believe the Legislature intended for section 59-40-55(C) to apply to local school districts.

"The canon of construction 'expressio unius est exclusio alterius' or 'inclusio unius est exclusio alterius' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (quoting Black's Law Dictionary 602 (7th ed. 1999)). Because section 59-40-55(C) expressly states SCPCSD may collect the fee, we believe the Legislature intended for that provision to apply only to SCPCSD and the references to "sponsor" were only intended to refer to SCPCSD as a sponsor. Moreover,

in reading section 59-40-55 along with other provisions in the Charter Schools Act, we believe the other provisions in the Charter School Act support this interpretation.

Section 59-40-140 of the South Carolina Code (2020) sets forth how charter schools are funded. Subsection (A) states how local school boards are to fund schools their district sponsors and states:

(A) A local school board of trustees sponsor shall distribute state, county, and school district funds to a charter school as determined by the following formula: the previous year's audited total general fund revenues, divided by the previous year's weighted students, then increased by the Education Finance Act inflation factor, pursuant to Section 59-20-40, for the years following the audited expenditures, then multiplied by the weighted students enrolled in the charter school, which will be subject to adjustment for student attendance and state budget allocations based on the same criteria as the local school district. These amounts must be verified by the State Department of Education before the first disbursement of funds. All state and local funding must be distributed by the local school district to the charter school monthly beginning July first following approval of the charter school application and must continue to be disbursed to the charter school for the duration of its charter and for the duration of any subsequent renewals. After verification of student attendance on the fifth day of school at the beginning of each school year, the State Department of Education shall distribute funds to school districts with charter schools: (1) having approved incremental growth and expansion as provided in their charter application; or (2) for opening of new charter schools in the current fiscal year. These funds must be released to districts on behalf of their charter schools no later than fifteen days after receipt of verified enrollment. Districts shall provide this funding to eligible charters no later than thirty days after receipt from the Department of Education. Necessary adjustments due to enrollment changes must be made pursuant to the Education Finance Act.

S.C. Code Ann. § 59-40-140(A). This provision mandates how local school districts allocate state funds to charter schools. Nothing in this provision contemplates or allows a local school district to withhold state funds to a charter school. Moreover, subsection (E) of this provision states that any centralized services provided by the sponsor must be negotiated as part of the contract between the school and the sponsor. S.C. Code Ann. § 59-40-140(E). Therefore, we believe not only must funds be allocated in accordance with section 59-40-140(A), but any services provided by the local school district must be negotiated as part of a contract with the school, and thus, any fees for such services would need to be negotiated as well. As such, we do not find authority for the local school districts to withhold funds from the charter schools they sponsor absent a provision in a contract.

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Conclusion

Based on our review of the Charter Schools Act, we do not believe section 59-40-55(C) gives local school districts the authority to withhold state funds from the schools they sponsor. Additionally, we believe local school districts must allocate state funds in accordance with section 59-40-140(A) and if they intend to provide services to the charter schools they sponsor, such services, and presumably any fees associated with providing such services, must be negotiated as part of the contract between the sponsor and the charter school. S.C. Code Ann. § 5940-140(E).

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General