



State of North Carolina

Department of Justice

P O BOX 629

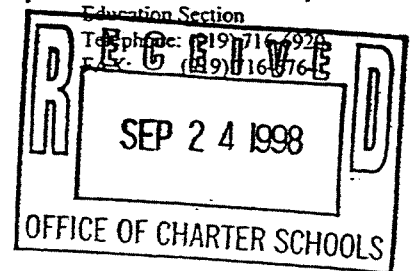
RALEIGH

27602-0629

MICHAEL F EASLEY
ATTORNEY GENERAL

REPLY TO: Laura Crumpler
Education Section

Telephone: (919) 716-4924
F.C. (919) 116-7663



September 23, 1998

C. Frank Goldsmith, Jr.
Goldsmith, Goldsmith & Dews, P.A.
P O. Box 1107
Marion, NC 28752

Re: Advisory Opinion; Charter School's Entitlement to Supplemental Tax Funds; G S 115C-238 29H(b)

Dear Mr. Goldsmith

As counsel for Francine Delaney New School for Children, a public charter school created under the Charter School Act, you have requested the opinion of this office regarding whether a local school board which is authorized to levy a supplemental tax is obligated to transfer a share of those tax monies collected to a charter school. In our opinion, the answer is -yes.

According to the information you have supplied, the voters in the Asheville City School District approved, pursuant to G.S 115C-500 et seq, the levy of a supplemental tax in August 1935 for the "purpose of operating the schools of said unit on a higher standard than that provided for by State support . . . "

Pursuant to the Charter School Act, G S 115C-238 29A et seq., in addition to certain State funds, a charter school is entitled to a share of local funds. G S 115C-238.29H(b) provides as follows:

If a student attends a charter school, the local school administrative unit in which the child resides shall transfer to the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year.

(Emphasis added)

Your question is whether monies collected by virtue of a supplemental tax are to be considered part of the "local current expense appropriation to the local school administrative unit"

The cardinal rule of statutory construction is that a statute must be construed to effectuate the intent of the legislature. *State v. Hart*, 287 N.C. 76, 213 S.E.2d 291 (1975). In order to discern the legislative intent, courts look to the language of the statute, its spirit and its purpose. *State ex rel. North Carolina Milk Com. v. National Food Stores, Inc.*, 270 N.C. 323, 154 S.E. 2d 548 (1967). The intent of the legislature must be found from the language of the act, its legislative history and the circumstances surrounding its adoption. *Id.* Words are generally given their ordinary meaning, and courts will construe words in accordance with their meaning at the time of enactment. *Southern Bell Tel & Tel. Co v Clayton*, 266 N.C. 687, 147 S.E.2d 295 (1966). Moreover, where statutes are *in pari materi*, that is, they relate to the same subject, although enacted at different times, they must be construed together to ascertain legislative intent. *Carver v Carver*, 310 N.C. 669, 314 S.E.2d 739 (1984)

Part 2 of the "School Budget and Fiscal Control Act" describes the budget process for local boards of education. In G.S. 115C-426, the legislature has set forth the three components of the local school budget:

- The uniform budget format shall require the following funds:
- (1) The State Public School Fund.
 - (2) The local current expense fund
 - (3) The capital outlay fund,

The statute also authorizes funds for "trust funds, federal grants restricted as to use, and special programs." G.S. 115C-426(c).

The "State Public School Fund" includes appropriations from the State Board of Education for current operating expenses. G.S. 115C-426(d). The "local current expense fund" includes the following:

. . . revenues accruing to the local school administrative unit by virtue of Article IX, Sec. 7 of the Constitution [fines and forfeitures], monies made available to the local school administrative unit by the board of county commissioners, [and] supplemental taxes levied by or on behalf of the local school administrative unit pursuant to a local act or G.S. 115C-501 to 511 . . .

G.S. 115C-426(e) (emphasis added) The Charter School Act uses the term "local current expense appropriation" and that term is almost identical to the term "local current expense fund" which is specifically defined to include supplemental taxes. While the Charter School Law specifies "appropriations" and the budget provisions use the term "fund," the distinction is one

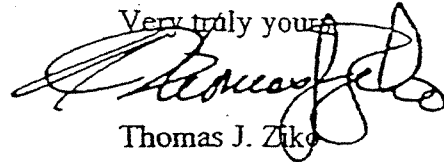
C. Frank Goldsmith, Jr.
September 23, 1998
Page 3

without a difference. G.S. 115C-430 specifically refers to county "appropriations funded by supplemental taxes." Thus we do not believe the legislature intended to differentiate between the term "appropriations" and the term "fund," but rather intended the two terms to be synonymous and for the well-established definition of "local current expense fund" to apply to the local appropriations to charter schools.

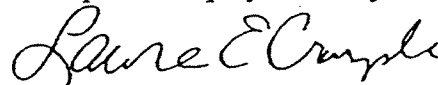
We think this interpretation is consistent with legislative intent. It is clear from the funding provisions that the same State per pupil allocations would flow to the charter schools as to traditional public schools. In our opinion, it is consistent for the local school system to transfer all monies it has budgeted in the current expense fund pro rata to the charter school. This puts public charter school students on an equal footing with students attending the traditional public schools. See G.S. 115C-238.29E(a) (A charter school . . . shall be a public school within the local school administrative unit in which it is located.)

In conclusion, all funds contained in the local school board's current expense fund are subject to G.S. 115C-238.29H(b) and must be transferred to the charter school on a per pupil basis as required by that subsection. I hope this response adequately addresses your inquiry. Should you have further questions, please do not hesitate to contact us.

Very truly yours,



Thomas J. Ziko
Special Deputy Attorney General



Laura E. Crumpler
Assistant Attorney General

LEC/bb

cc: Phil Kirk
Michael Ward
Philip Price
Grova Bridges
Michael Fedewa
Allison Schafer
Philip Adkins