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Honorable Randy Hinshaw  
Member, House of Representatives  
Post Office Box 182  
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Salaries – Appropriations – Education  
Foundation Program – Education,  
Department of

All legislatively mandated salary increases for Child Nutrition Program workers for the 1994-1995 fiscal year and forward, except the 2005-2006 fiscal year, must be funded from Other Current Expense (“OCE”) in the Foundation Program and shall not be taken from the Child Nutrition Program.

Dear Representative Hinshaw:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Under section 16-22-11(b)(8) of the Code of Alabama, can the State Department of Education arbitrarily change the formula for providing funds to the local school system for the legislatively mandated salary increases prior to fiscal year 2001-2002 for Child Nutrition workers when failure to do so will require monies generated by the operation of the school cafeteria to be used for these increases?

FACTS AND ANALYSIS

Your request states that, since 1994, the Department of Education has funded salary increases for Child Nutrition program employees in local school

systems. This year, however, the State Department of Education has determined that, although fringe benefit expenses will continue to be funded, the legislatively mandated raises prior to the 2001-2002 fiscal year will no longer be funded by the State but will come, instead, from cafeteria operating funds.

You question whether this issue is governed by our opinion to Honorable Nolan Williams, Member, House of Representatives dated October 7, 1994, A.G. No. 95-00003. That opinion construed Act 94-474, which provided a salary increase for certain public education employees, including Child Nutrition Program workers, for the 1994-1995 fiscal year. 1994 Ala. Acts No. 94-474, 785. Act 94-474 was codified at section 16-22-11 of the Code of Alabama. ALA. CODE § 16-22-11 (2001). Section 16-22-11(b)(8) contains the following limitation: "Funds contained in the annual education appropriations act for the public schools for cafeteria personnel salaries shall be used only for that purpose. ***Cafeteria operating funds shall not be used for salary increases thereby supplanting those funds provided by the Legislature's appropriations for cafeteria employee salaries.***" ALA. CODE § 16-22-11(b)(8) (2001) (emphasis added). Based on this language, the *Williams* opinion concluded that the salary increases for the Child Nutrition Program workers shall be fully funded by local school boards from state funds and not funds generated by lunchroom sales from the Child Nutrition Program.

Act 95-314 provided for the Foundation Program for the annual funding of the public schools. 1995 Ala. Acts No. 95-314, 634. The Foundation Program was implemented with the beginning of the 1995-1996 fiscal year. *Id.* at 667. It is codified at section 16-13-230, *et seq.*, of the Code of Alabama. ALA. CODE § 16-13-230 to 16-13-239 (2001 & Supp. 2008). This Office, in considering the source of funding of the newly created position of chief school financial officer, recently explained the operation of the Foundation Program as follows:

The Legislature makes appropriations to the credit of the Foundation Program Fund and any other funds that are set aside for the purpose of providing educational opportunities. ALA. CODE § 16-13-230 (2001). Foundation Program Funds are principally used to provide a 180 full instructional day minimum school term and to assist in the promotion of educational opportunities. ALA. CODE § 16-13-231 (Supp. 2007). These funds are disbursed to eligible public schools based on a particular formula that takes into consideration the number of pupils enrolled at a particular school during the first 20 scholastic days following Labor Day of the preceding school year. Based on these enrollment numbers, that school earns particular units that translate to Foundation Program ***salaries, fringe benefits for Foundation***

***Program salaries, classroom instructional support units, and other current expenses.*** See, generally, ALA. CODE §§ 16-13-231 to 16-13-239 (2001 & Supp. 2007); ALA. ADMIN. CODE r. 290-2-1-.01(1) (2007).

Foundation Program salaries include salaries for teachers and instructional support persons. Schools earn instructional support units based on the accreditation standards established by the Southern Association of Colleges and Schools or as otherwise required by an accreditation system adopted by the State Board of Education. See, generally, § 16-13-232 (Supp. 2007). Currently, section 16-13-232(a) states that ***instructional support units are earned for principals, assistant principals, counselors, and librarians.*** *Id.*

Based on the foregoing, the position for the chief school financial officer is not one of the positions for which Foundation Program funds calculated for teacher salaries may be used. See, generally, Opinion to Honorable Paul Parker, Member, House of Representatives, dated October 24, 1997, A.G. No. 98-00017.

The Foundation Program funding, however, includes funds for ***other current expenses*** that may be used for the salaries of noninstructional school board personnel in supportive roles. As such, the chief school financial officer may be paid with Foundation Program funds or local funds.

Opinion to Honorable David A. Sullivan, Attorney, Bessemer Board of Education, dated April 3, 2008, A.G. No. 2008-068, at 3 (emphasis added).

This conclusion is further supported by Rule 290-2-1-.01(1)(d) of the State Board of Education governing other current expense, which specifically states that "OCE may be used to pay salaries and fringe benefits for support personnel." ALA. ADMIN. CODE r. 290-2-1-.01(1)(d) (2008). Therefore, the Foundation Program similarly authorizes Child Nutrition Program workers to be funded through OCE.

With the exception of the 2005-2006 fiscal year [ALA. CODE § 16-22-13.3(a)(2) (Supp. 2008)], salary increases for public education employees, including Child Nutrition Program workers, subsequent to the increase for the 1994-1995 fiscal year in section 16-22-11, have included language similar to the language in that statute limiting the funding source for Child Nutrition Program

workers to state funds. ALA. CODE § 16-22-12(a)(2) (2001) (1996-1997 fiscal year); ALA. CODE § 16-22-13(a)(2) (2001) (1998-1999 fiscal year); ALA. CODE § 16-22-13.1(a)(2) (2001) (2000-2001 fiscal year); ALA. CODE § 16-22-13.2(a)(2) (Supp. 2008) (2002-2003 fiscal year).

Beginning with the salary increase for the 2006-2007 fiscal year, the funding limitation language was changed, recognizing for the first time that Child Nutrition Program workers are paid from OCE and rewriting the limitation as follows:

All *state-mandated and state-funded* salary increases and fringe benefits for Child Nutrition Program workers shall be fully funded from the Foundation Program appropriation in the Education Trust Fund appropriation act, and shall therefore be subsequently fully funded by all local boards of education from funds provided in other current expense and not from funds generated by the Child Nutrition Program unless the local school system's Child Nutrition Program has in excess of a three-month operating reserve.

ALA. CODE § 16-22-13.4(a)(2) (Supp. 2008) (emphasis added). This same language was carried forward for the pay increase for the 2007-2008 fiscal year, except that the beginning language "[a]ll state-mandated and state-funded salary increases and fringe benefits for" was removed. ALA. CODE § 16-22-13.5(a)(2) (Supp. 2008). The "state-mandated and state-funded" language returned in the funding limitation as stated in the current education appropriations act for the 2008-2009 fiscal year, which is virtually identical to the language in section 16-22-13.4(a)(2). 2008 Ala. Acts No. 2008-552, 1201, 1268-69.

The fundamental rule of statutory construction is to ascertain and give effect to the intent of the Legislature in enacting the statute. *Ex parte Ala. Dep't of Mental Health & Mental Retardation*, 840 So. 2d 863, 867 (Ala. 2002). A literal interpretation of a statute that would defeat the purpose of the statute should not be adopted if another reasonable interpretation can be given to it. *Odum Lumber Co. v. S. States Iron Roofing Co.*, 36 Ala. App. 270, 272, 58 So. 2d 641, 643 (1951). Courts do not interpret provisions in isolation, but consider them in the context of the entire statutory scheme. *Siegelman v. Ala. Ass'n of School Boards*, 819 So. 2d 568, 582 (Ala. 2001).

A plain-language argument can be made that the addition of the "state-mandated and state-funded" language makes the pay increases effective only if the increases are actually funded by the Legislature. Under this vein of thought, the increases are not due if inadequate funding is provided for OCE in a given year. This argument, of course, has no bearing on the increases prior to the

2006-2007 fiscal year when the language was first used. Therefore, the *Williams* opinion remains applicable to those increases, and they must be funded from OCE and not the Child Nutrition Program.

The increases for the 2006-2007 and 2008-2009 fiscal years, when the “state-mandated and state-funded” language was used, require a closer analysis. As already discussed, OCE is used to pay salaries for support personnel generally, not just Child Nutrition Program workers. Moreover, it is used for expenses other than salary. The Board of Education advises local school boards that it “can be expended for operating expense or salary expense.” *A Guide to State Allocation Calculations 2008-2009*, State Department of Education Administrative and Financial Services Division, at 16.

When the Legislature appropriates funds to the Foundation Program Fund, however, it does so in a lump sum appropriation for the Board of Education to allocate to the local boards of education based on the formula in the Foundation Program and does not provide a line item appropriation for each purpose for which OCE funds may be spent. *E.g.*, 2008 Ala. Acts No. 2008-552, 1201, 1214. Accordingly, an appropriation resulting in a decreased amount for OCE does not indicate the Legislature’s intent not to fund certain pay increases, positions, or expenditures, including increases for Child Nutrition Program workers.

Absent the “state-mandated and state-funded” language, the new version of the funding limitation simply restates, in a different way, the same principle as the preceding versions. The one primary exception, for purposes of this opinion, is that it strengthens the limitation by clarifying where the pay increases are specifically funded in the Foundation Program—OCE—whereas the preceding versions generally stated that they came from the “annual Education Trust Fund appropriation in the Foundation Program” or the “annual budget act for the public schools.” Given this other language strengthening the limitation, and the consistent history of the preceding versions to ensure that the increases are funded from state funds, the more reasonable construction of the “state-funded” language is that it merely reinforces that the increases are, in fact, funded from state funds. Consequently, with the exception of the 2005-2006 fiscal year for which no funding limitation was provided, all of the increases for the 1994-1995 fiscal year and forward must be funded from OCE and not the Child Nutrition Program.

#### CONCLUSION

All legislatively mandated salary increases for Child Nutrition Program workers for the 1994-1995 fiscal year and forward, except the 2005-2006 fiscal

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year, must be funded from Other Current Expense in the Foundation Program and shall not be taken from the Child Nutrition Program.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General  
By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

TK/GWB

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