Minutes/May 20,2024

The Board of Trustees of School District Five of Lexington and Richland Counties met at the Center for Advanced Technical Studies with the following members present:

Mrs. Elizabeth Barnhardt
Mrs. Rebecca Blackburn Hines, Chair
Mr. Matt Hogan, Vice Chair
Mrs. Catherine Huddle
Mr. Mike Satterfield
Mr. Kevin Scully
Ms. Kimberly Snipes, Secretary
Dr. Akil E. Ross, Sr., Superintendent

The following staff were in attendance:

Dr. Michael Harris, Chief of Student Services and Planning Officer
Mrs. Tina McCaskill, Chief Academics Officer
Mrs. Marty Rawls, Interim Chief Financial Officer
Mrs. Amanda Taylor, Director of Communications
Dr. Tamara Turner, Chief of Human Resources
Mr. Dave Weissman, Executive Director of Operations

A livestream video link was provided to the public as a viewing option for the May 20, 2024, board meeting.

Chair Blackburn Hines called the regular meeting to order and gave welcoming remarks.

Elizabeth Barnhart, Board of Trustees, gave the Invocation and Pledge of Allegiance.

The Board conducted the School Board Spotlight.

During the meeting, Dr. Ross, Superintendent, shared updates on the District FOCUS Strategic Plan for the years 2022-2023 to 2026-2027; Mrs. Marty Rawls, Interim Chief Financial Officer gave a Monthly Financial Update (March) (Exhibit D), ESSER III Quarterly Update (March) (Exhibit D) and reviewed the ESSER Plan Amendment (Exhibit D).

During public participation, Dr. Maxine Reeves Sumpter spoke about referendum; Jason Baynham spoke about teacher pay; William Bousman, Jr. spoke about referendum; Larry Haltiwanger spoke about resolution ordering the referendum; Kim Murphy spoke about bond referendum and budget; and Mr. Marion Boyd, Sr. spoke about Richlex Foundation.

The Board presented for discussion:

- Five-Year Master Facilities Finance Plan
- Rezoning Plan for 2026-2027

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

The Board presented for information:

- Office of Attorney General Opinion letter concerning budget transfers within Lexington-Richland School District Five's Operating Budget (Exhibit H)

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N = No
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R = Recuse

Record of Voting

SCHOOL DISTRICT FIVE
OF
LEXINGTON AND RICHLAND COUNTIES

Meeting of May 20, 2024

		BARNHARDT	BLACKBURN HINES	HOGAN	HUDDLE	SATTERFIELD	SCULLY	SNIPES
1.	M. Hogan S. Satterfield Approve the Agenda Mrs. Huddle requested that the attorney general opinion letter on budget transfers be added to the 5/20/24 minutes.	A	X	X	X	X	X	X
2.	M. Hogan S. Satterfield I make the motion to enter executive session to consider the following: a.) Selected employment items (Exhibit A) (Action); b.) Selected employment items (Exhibit B) (Information Only); c.) Contractual matter regarding project management services (Exhibit C).	X	X	X	X	X	X	X
3.	M. Hogan S. Satterfield I move that we approve the minutes of the May 6, 2024, board meeting.	X	X	X	X	X	X	X
4.	M. Hogan S. Snipes I move that the Board approve the selected employment items as shown in Exhibit A for action.	X	X	X	X	X	X	X

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	BARNHARDT	BLACKBURN HINES	HOGAN	HUDDLE	SATTERFIELD	SCULLY	SNIPES
5. M. Hogan S. Snipes I move that the board approve the administration's recommendation to award Brownstone Construction Group the contract for services of Construction Management Services for the Irmo High School project.							
M. Huddle S. Barnhardt I would like to amend the motion to modify 11.3 to replace the words Fee Draw Schedule and the rest of that sentence with the words Exhibit B and to delete the Fee Draw Schedule from the list of other documents under 13.2.	X	N	N	X	N	N	N
VOTE ON ORIGINAL MOTION	X	X	X	N	X	X	X
6. M. Hogan S. Scully I move that the Board approve the administration's recommendation to approve the resolution ordering a referendum to issue not exceeding $240,000,000 of General Obligation Bonds including the referendum question to appear on the General Election Ballot November 2024. (Exhibit E) Mrs. Huddle requested that her statement be added to the minutes stating why she is voting no to the proposed bond referendum.	AB	X	X	N	X	X	X

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		BARNHARDT	BLACKBURN HINES	HOGAN	HUDDLE	SATTERFIELD	SCULLY	SNIPES
7.	M. Hogan S. Snipes I move that the Board approve the First Reading of the FY 2024-2025 General Fund Budget in the amount of $240,100,236 with the operating millage rate remaining unchanged at 266.0 mills and approval of the First Reading of the Fund Balance Assignment to include $3,211,334 for employee retention incentives (to be paid in November 2024) and $1,500,000 for portable classrooms. (Exhibit F)							
	M. Huddle S. Barnhardt I move to amend the motion to remove the fund balance re-assignment of $1.5 million for portables and to remove the $1.2 million for ESSER III positions and use those funds to increase our Bachelors and Bachelors +18 hours certified step salaries.	X	N	AB	X	N	N	N
	VOTE ON ORIGINAL MOTION	N	X	X	N	X	X	X
8.	M. Hogan S. Snipes I move that the Board approve the Office of Federal and State Accountability Waiver request to ensure full implementation of the approved District Strategic Plan or School Renewal Plan. (Exhibit G)	X	X	X	X	X	X	A

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			BARNHARDT	BLACKBURN HINES	HOGAN	HUDDLE	SATTERFIELD	SCULLY	SNIPES
9.	M. Hogan	S. Snipes	X	X	X	X	X	X	X
	Adjourn at 9:33 p.m.								

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EXHIBIT H

ALAN WILSON
ATTORNEY GENERAL

RECEIVED
MAY 09 2024
BY:

May 6, 2024

Ms. Rebecca Blackburn Hines
Chair
Board of Trustees
Lexington-Richland School District Five
1020 Dutch Fork Road
Irmo, South Carolina 29063

Attachment #1, pg. 1 is included with the minutes of the 5-20-24 meeting, at the request of Board member Cathy Huddle pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Dear Ms. Blackburn Hines:

We received your letter requesting an opinion of this Office concerning budget transfers within Lexington-Richland School District Five's (the "District's") operating budget after it has been approved by the District's board. Specifically, you ask "whether or not, South Carolina school boards must approve mid-year budget transfers" and "if mid-year budget transfers may be done without board approval, are there any limitations as to the type or amount of budget transfers which can be made without approval?"

Law/Analysis

The South Carolina Constitution provides: "each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year." S.C. Const. art. X, § 7(b) (2009). Additionally, section 6-1-80(A) of the South Carolina Code (2004) requires school districts "provide notice to the public by advertising the public hearing before the adoption of its budget for the next fiscal year in at least one South Carolina newspaper of general circulation in the area." This statute also states the "notice must be given not less than fifteen days in advance of the public hearing and must be a minimum of two columns wide with a bold headline" and goes on to describe what must be included in the notice. S.C. Code Ann. § 6-1-80. As we stated in a 2011 opinion:

> Public schools of this State are governed by boards of trustees. Op. S.C. Atty. Gen., March 13, 1996 [noting that S.C. Code Ann. §59-19-10 bestows upon school trustees the authority for the "management and control" of each school district]. An opinion of this office dated February 16, 1983, further indicated that ". . . the board of trustees of a school district is responsible for the management and control of the district, subject only to the supervision and orders of the county board of education if there is a county board. . . (and) . . . has the power to make rules and regulations and to adopt policies."

Attachment #1, pg. 2 is included with the minutes of the 5-20-24 meeting, at the request of Board member Cathy Hudler pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Op. Att'y Gen., 2011 WL 3918179 (S.C.A.G. Aug. 25, 2011). As such, we believe a school's board of trustees is responsible for establishing a district's budget and ensuring compliance with section 6-1-80.

In addition to these constitutional and statutory provisions, some districts' budgetary authority is provided for by local law.[1] Therefore, to answer your question regarding school boards in general, we would have to look at each individual district's local law to determine how to handle mid-year budget transfers. We presume you are specifically interested in the District, and therefore will consider its local laws. Initially, we note the unique creation of the District, which according to the District's website "was organized by action of the Lexington County Board of Education in 1951 and the Richland County Board of Education in 1952." https://www.lexrich5.org/our-district/our-district. Therefore, unlike many school districts in this state, the District was not created through an act of the Legislature. However, throughout the years, the Legislature adopted local laws concerning the District. While most of these local laws primarily pertain to the composition of the District's board, a 1979 act vested authority in the District's board to determine and levy its school tax. 1979 S.C. Acts 280. However, we did not find any local laws addressing the District's budgetary authority or how to handle budget transfers, therefore we find the District's responsibility to create and maintain a budget comes from the constitutional and statutory law set forth above. Moreover, we believe this authority and responsibility rests with the District's board as it is charged with the management and control of the District.

Your letter indicates that while the District's board approves an annual budget, a District policy allows budget transfers of up to $10,000 without board approval and the board is considering allowing "unlimited transfers within the same accounts/functions (without increasing the total budget) without board approval and transfers between accounts/functions up to $250,000 without board approval." We believe allowing budget transfers without board approval could be viewed by a court as an unauthorized delegation of the board's discretionary authority.

As explained above, the Legislature vested authority over the management and control of school districts with their boards of trustees and we believe this included the responsibility to create and maintain its budget in accordance with section 6-1-80. Creating and maintaining a budget involves and exercise of discretionary authority. While we recognize the board may delegate administrative and ministerial duties to the District employees, we have long recognized administrative bodies cannot delegate their discretionary authority. See Op. Att'y Gen., 2005 WL 1024603 (S.C.A.G. Apr. 14, 2005) (stating "discretionary authority generally may not be subdelegated without express statutory authority."); Op. Att'y Gen., 1985 WL 166051 (S.C.A.G. Aug. 8, 1985) ("Its is well recognized that there must exist statutory authority for an administrative officer or agency to subdelegate any portion of the authority which has been delegated to him by statute."); Op. Att'y

[1] In past opinions, we discussed various local laws governing school district budgets. For example, in a 2015 opinion we discussed the local law governing the budget for School District Four in McCormick County. Op. Att'y Gen., 2015 WL 8773706 (S.C.A.G. Nov. 24, 2015). Additionally, in 2016 we discussed the local law governing the budget for the Charleston County School District, which included a provision on budget transfers. Op. Att'y Gen., 2016 WL 6496887 (S.C.A.G Oct. 25, 2016).

Attachment #1, pg. 3 is included with the minutes of the 5-20-24 meeting, at the request of Board member Cathy Huddle pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Gen., 1979 WL 42873 (S.C.A.G. Mar. 19, 1979) ("Unless provided otherwise by statute, governmental entities cannot further delegate any discretionary powers."). As such, it is our opinion that the District's board may not delegate authority to employees of the District to transfer funds within its budget without express approval of the District's board.

Moreover, we believe a contrary interpretation would run afoul of the Legislature's intent regarding the formalities required under section 6-1-80. "The primary rule of statutory construction is to ascertain and give effect to 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) (citation omitted). By requiring notice and a public hearing prior to the adoption of an annual budget, we gather the Legislature intended for the budgeting process to be open to the public. We believe allowing District employees to subsequently reorganize the budget outside the view of the public is contrary to the Legislature's intent regarding section 6-1-80.

In your opinion request, you referred to a 2006 opinion in which we discussed the ability of a county council to transfer funds from one county department to another after the adoption of the county's budget. Op. Att'y Gen., 2006 WL 1376908 (S.C.A.G. May 8, 2006). We cited section 4-9-140 of the South Carolina Code, which in addition to requiring county councils to adopt operating and capital budgets, specifically allows for budget transfers so long as they are approved by the county council. Id. We determined this approval required must come in the form of an ordinance adopted by the council. Id. While we did not find specific authority under state law specifying school districts may make budget transfers so long as their board approve them, given the responsibility of school districts to similarly adopt annual budgets and the fact that we believe the Legislature intended for this responsibility to be carried out by their boards in accordance with section 6-1-80, we similarly believe a school board must also take formal action to make budget transfers.

Conclusion

Some school districts have local laws pertaining to their budgetary authority and more specifically when and how budget transfers may be authorized. We found no local law pertaining to the District in this regard and therefore rely solely on the general law applicable to all districts to answer your question. Article X, § 7(b) of the South Carolina Constitution requires school districts to create annual budgets. Section 6-1-80 of the South Carolina Code specifies notice and a public hearing are required for a school district to adopt a budget. The formalities required under 6-1-80 indicate the Legislature's intent for budgetary authority to rest with school boards, which are charged with management and control of school districts. Because creating and maintaining a budget is a discretionary function, we do not believe the District's board, without authority from the Legislature to the contrary, may delegate this function to District employees. As such, we do not believe the District's board can permit District employees to make budget transfers without the approval of the board.

Attachment #1, pg. 4 is included with the minutes of the 5-30-24 meeting, at the request of Board member Cathy Huddle pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Sincerely,

Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

Four Reasons I am Voting No to the Proposed Bond Referendum

Submitted by Trustee Huddle 5/20/24

1. **Nothing to Expand the Capacity of Chapin High School:** While the bond referendum includes some much-needed projects, it will max out our borrowing power without addressing our most pressing facilities issue - the overcrowding and projected continued enrollment growth at Chapin High. As a result, <u>if it passes, we will likely face another tax increase in the next few years to either increase the capacity of Chapin High School or make Spring Hill High School a zoned school.</u>

2. **Increased Maintenance and Operating Costs Will Decrease Per Student Funds for Teaching:** The requested referendum includes projects that will increase the total number of facilities we have to operate despite the fact that our overall enrollment is decreasing. That will result in a material increase in our annual operating costs per student. The annual operating budget funds teacher to student ratios, other staff and teacher salaries. <u>Every dollar we increase maintenance and other costs is a dollar we can't spend on teachers and students.</u>

3. **Unknown Costs:** We have not received (as of yesterday, 5/19), let alone discussed, how much our operating expenses will increase and the new administrative positions that will be needed to support the net new facilities. We also have not received (as of yesterday, 5/19), let alone discussed, cost estimates for putting the measure on the ballot and other expenses the administration plans to incur if we vote yes tonight. We are abdicating our fiduciary responsibilities to our students, teachers, staff and community if we vote yes on this matter before we have received and discussed these costs. And frankly we're setting a very poor example for students regarding commitment to large expenses without due diligence and budgeting.

4. **Missing Financial Guardrails:** We don't have a board audit committee as recommended by our auditor. We don't have an Internal Auditor as required by policy. We don't even have a permanent CFO. In other industries these yet to be installed guardrails would be in place and supplemented by a well-established team of in-house specialists in construction and financial quality assurance long before such large expenditures would be seriously entertained. Earlier this year we heard the refrain of "micromanagement" from some board members when other trustees tried to ensure we followed state law regarding budget transfers. They even voted against getting an Attorney General's opinion on the matter. Fortunately, enough trustees voted in favor of getting the opinion and the AG wrote "we believe this authority and responsibility rests with the District's board as it is charged with management and control of the District". At our last meeting we heard "micromanagement" again from some trustees when others tried to ensure board policy was followed regarding construction change orders. We need these guardrails in place <u>and a board consistently loyal to its fiduciary responsibilities</u> well before we ask the tax payers for $240 million dollars.

My ask for my fellow board members is this: please vote no on this proposal and let's work together with teacher, parent and community representatives to build a better plan - one that addresses security, pressing needs and the growth in Chapin and does so without increasing operating costs so that we can fully invest in our most important resources, our teachers and students.

Note that I support the renaming of DFES to Richlex whether or not the bond referendum passes.

Attachment #2, pg. 1 is included with the minutes of the 5-20-24 meeting, at the request of Board member Cathy Huddle pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.