

From: Mottel, Haley <HaleyMottel@gov.sc.gov>
To: Teppara, Dino <DTeppara@ed.sc.gov>
CC: Veldran, Katherine <KatherineVeldran@gov.sc.gov>
Date: 8/19/2014 10:05:58 AM
Subject: RE: Healthy Hunger-Free Kids Act

Dino,

I appreciate your quick response and for providing this information. Could you please provide the position of the Department on the frequency of exemptions for fundraisers or an outline of what the amendment will entail?

Also, if the State Board of Education does not approve the proposed amendment, will there be no exempt fundraisers for the school year?

Thank you for your help with these questions.

Thank you,
Haley

From: Teppara, Dino [mailto:DTeppara@ed.sc.gov]
Sent: Monday, August 18, 2014 4:41 PM
To: Mottel, Haley
Cc: Veldran, Katherine
Subject: RE: Healthy Hunger-Free Kids Act

Haley,

The rule just took effect July 1. We intend to propose an amendment to Regulation 43-168 to provide some level of exemptions for fundraisers: <http://scstatehouse.gov/coderegs/c043.php>.

We're issuing notice that we're proposing an amendment; since we have to wait 30 days under the Administrative Procedures Act (APA), the amendment will go before the State Board of Education during their Oct. meeting. Assuming they approve it, there will be another 30 day window we have to wait before they can take it up for second reading; therefore, this will happen in December.

I do not know if an executive order from the Governor is possible, since statute provides the SBE with authority to regulate this area.

The guidance from the USDA allows us to establish a policy providing for fundraising exemptions. The SCDE cannot speed up the process of doing this, because we must comply with the requirements of the APA. The APA establishes a process which requires notice and public input before we can set policy. The State Department of Education does not have the authority to set the exempt fundraiser policy on its own.

Pursuant to state law, the State Board of Education is the policy making arm of education in the state (S.C. Code Ann. Sec. 59-5-60 states that "the State Board of Education shall have the power to: (1) Adopt policies, rules and regulations not inconsistent with the laws of the State for its own government and for the government of the free public schools."). The Superintendent of Education, through the State Department, carries out the policies (S.C. Code Ann. Sec. 59-3-30 the Superintendent shall "[a]dminister, through the State Department of Education, all policies and procedures adopted by the State Board of Education.") Unless specifically set forth in state law, the Superintendent does not have rule-making authority. With regard to the decision to move forward through the regulation process, the APA applies. However, since this is a regulation that is in response to a federal mandate, we do not have to go through the extra step seeking General Assembly approval.

The State Board has responsibility over school food services. Sec. 59-63-710 and the following statutes, create the

school lunch division and requires the state supervisor to be appointed by the State Board. This is the only office in the SCDE that has its director specially approved by the State Board. Additionally, the General Assembly gave the State Board the responsibility to set policy over school nutrition and competitive foods in S.C. Code Ann. Sec. 59-10-310.

Please let me know if there are any additional questions.

Regards,
Dino

From: Mottel, Haley [<mailto:HaleyMottel@gov.sc.gov>]
Sent: Monday, August 18, 2014 3:46 PM
To: Teppara, Dino
Cc: Veldran, Katherine
Subject: Healthy Hunger-Free Kids Act

Dino,

Josh Baker gave me your contact information. I was contacted by Rep. Garry Smith regarding concerns in his district and the limitations that are imposed on fundraisers by the interim final rule titled, "National School Lunch and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010. "

According to Rep. Smith's constituents, there are currently zero intermittent fundraising days that are exempt from the rule. Could you please give me some guidance on how the Department is directing schools to proceed with fundraising activities for the upcoming year so that they are in compliance with this act. Also can you please confirm that the Department has not taken any action to exempt a certain number of fundraisers from this rule.

Thank you,
Haley

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