



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

October 15, 1997

CHARLES MOLONY CONDON
 ATTORNEY GENERAL

The Honorable Joe Wilson
 Senator, Lexington County
 P.O. Box 5709
 West Columbia, South Carolina 29171

(Also by fax 791-8410)

Dear Senator Wilson:

You have requested the advice of this Office as to the whether the consent provisions of § 59-19-250 (1976) apply to Lexington County School District Four when the Lexington County Board of Education has been abolished and its powers devolved upon the school districts board of trustees of that County pursuant to Act No. 601, 1994 S.C. Acts 6068. Previous Informal Opinions of this Office (Ops. Atty. Gen. October 30, 1995 and February 26, 1996) have concluded that the District is subject to the provisions of §59-19-250 which provides as follows:

The school trustees of the several districts may sell or lease school property, real or personal, in their school district whenever they deem it expedient to do so and apply the proceeds of any such sale or lease to the school fund of the district. The consent of the county board of education or, in those counties which do not have a county board of education, the governing body of the county, shall be first obtained by the trustees desiring to make any such sale or lease....(emphasis added)

Your question is whether Act 601 exempts the District from §59-19-250. The two previous informal opinions did not expressly address that Act which is apparently not indexed in the Index to Local Laws of the Code.

The following rules of statutory construction are relevant here:

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"If the intent of the legislature be clearly apparent from the language, the court may not embark upon a search for it de hors the statute. ***

"But where the language of the statute gives rise to uncertainty as to the legislative intent, the search for that intent may range; for it must be gathered from a reading of the statute as a whole in light of the circumstances and conditions existing at the time of its enactment." Timmons v. South Carolina Tricentennial Commission, 254 S.C. 378, 175 S.E. 2d 805, 817 (1975), quoting Abel v. Bell, 229 S.C. 1, 91 S.E. 2d 548.

Although the language of §59-19-250 is plain that the county governing body must give its consent in counties that do not have a county board of education, the circumstances at the time of the passage of the law adding the county consent provision also support this conclusion. The predecessor to §59-19-250 did not contain the county consent provision until it was added by Act No. 970, 1972 S.C. Acts 2126. See § 21-247, Code of Laws of South Carolina, 1962. When this change was made in 1972, a number of other county school boards had been abolished and their powers devolved upon county school districts. See eg. Act No. 821, 1966 S.C. Acts 2133 (Colleton Co.); Act No. 930, 1970 S.C. Acts 2013 (Kershaw Co.); see also School Districts of South Carolina, Organization and Administration, S.C. Department of Education, Table 1, 1988. That the legislature adopted the county governing body consent requirement of §59-19-250 when other school districts had been devolved the powers of county boards of education indicates a legislative intent that the consent of the county governing body would be required under those circumstances. This process of devolution has continued since then in other counties such as Lexington without exemption from §59-19-250. Act No. 780 §3, 1988 S.C. Acts 6441 (Laurens County); see also School Districts, supra.¹

In conclusion, Act No. 601 of 1994 does not appear to exempt Lexington School District Four from the provisions of §59-19-250. I hope that this information is of assistance to you.

¹ These conclusions concerning Lexington are distinguishable from those reached concerning Spartanburg County in another Informal Opinion (December 15, 1996). Although that Opinion concluded that Spartanburg districts were exempt from §59-19-250, the County Board was not abolished. Instead, the Board's powers were limited to matters unrelated to the sale of district property.

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Yours very truly,



J. Emory Smith, Jr.
Assistant Deputy Attorney General

CC: The Honorable Jake Knotts
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Reviewed and Approved by:



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Deputy Attorney General