

1982 WL 189170 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 18, 1982

*1 The Honorable Richard W. Riley
Governor of South Carolina
Post Office Box 11450
Columbia, South Carolina 29211

Dear Governor Riley:

In your letter of December 8, 1981, to the Attorney General you stated that a number of persons and school districts have inquired into what rights school districts have to recover, through litigation, a portion of the cost of removing or containing friable asbestos in our public schools. You requested that this office advise you of the rights school districts might assert and what statute of limitation problems might arise.

Enclosed is the opinion of this office which includes a discussion of six (6) potential theories of recovery and the effect of the applicable statute of limitation on each theory. Additional background information and a brief discussion of the 'persons' potentially liable to the school districts is included.

Because of the general nature of the request the opinion focuses on the legal as opposed to the factual issues which may be involved in a case of this nature. It is our opinion that there are at least six (6) sufficient legal grounds on which an action to recover the cost of removing friable asbestos may survive a motion to dismiss. This opinion does not address the issue of whether recovery can be achieved, since it will be necessary for the school districts to prove the factual allegations at trial in order to recover. Our office is not in a position to predict whether the school district can meet this burden. However, we recommend that every school district contemplating legal action contact counsel as soon as possible to request legal assistance in pursuing this matter.

Additional detailed information on the legal issues discussed in the enclosed opinion may be obtained from The Attorney General's Asbestos Liability Report to the Congress released on September 21, 1981. This report was mandated by Congress under the authority of the Asbestos School Hazard Detection and Control Act of 1980. It is a well researched, well documented and well presented document which addresses the legal issues in a very thorough manner. Also, it may be helpful for those schools districts considering legal action to secure a copy of the pleadings in the two (2) cases which have previously been filed by school districts and to contact the attorneys representing the school districts in these actions. The cases are: Cinnaminson Township Board of Education v. National Gypsum Co., No. L-49430-79 (N.J. Super. Ct. Law Div., filed May 19, 1980) and Dayton Independent School District v. U.S. Gypsum Co., No. B81-277-CA (U.S. Dist. Ct., ED. Tex. Beaumont Div., filed April 22, 1981). The school board in the Cinnaminson, New Jersey case is represented by Michael J. Vassolotti of Brown, Connery, Culp, Wilke, Purnell and Green, Camden, New Jersey. The Dayton school district is represented by Marlin Thompson and Martin W. Dies of Stephenson, Thompson and Dies, Orange, Texas.

*2 I hope the information contained in the enclosed opinion will be of some assistance to your office in dealing with the numerous inquiries which you receive regarding this matter. If you have any questions or if our office can assist you further, please let me know.

Sincerely,

B.J. Willoughby

Assistant Attorney General

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