

1977 S.C. Op. Atty. Gen. 210 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-272, 1977 WL 24612

Office of the Attorney General

State of South Carolina

Opinion No. 77-272

September 1, 1977

*1 The board of trustees of a constituent district in Charleston County can permit a student residing in that district to attend a middle school located in an adjoining constituent district, assuming that the board of trustees of the adjoining constituent district accept the transfer. If the board of trustees of either constituent district withholds consent, an appeal can be made to the Board of Trustees of Charleston County, which is empowered to review the decision to determine if consent was withheld unreasonably or capriciously.

TO: Ferdinan B. Stevenson

Robert R. Woods
Members
House of Representatives
Charleston County Legislative Delegation

QUESTIONS PRESENTED:

Can the board of trustees of a constituent district in Charleston County permit a student residing in that district to attend a middle school located in an adjoining constituent district?

If such a transfer is permitted, what local school authority must approve the transfer?

STATUTES, CASES, ETC:

55 S.C. Acts and Joint Resolutions, 470 Sections 1, 5, and 7 (1967);

S.C. Code Annotated, Sections 59-19-90, 59-63-30, 59-63-480, 59-63-490, 59-63-510 (1976);

Brown v. School District No. 20, C/A No. 7747 (DSC filed March 18, 1977);

[Brown v. School District No. 20](#), 226 F.Supp. 819 (E.D.S.C. 1963), aff'd., per curiam, 328 F.2d 618 (4th Cir. 1964);

Whittenberg v. Greenville County School District, 298 F.Supp. 785 (D.S.C. 1969);

[Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376, 378 (1970);

[State v. Davis](#), 238 Ind. 563, 151 N.E.2d 495, 497 (1958);

[Edwards v. State](#), 143 Ind. 84, 42 N.E. 525, 527 (1895);

1970-71 Ops. Att'y. Gen., No. 3150, page 110;

1964–65 Ops. Att'y. Gen., No. 1840, page 95.

DISCUSSION OF ISSUES:

In considering the questions presented, both local and general laws are applicable. The school districts in Charleston County were consolidated into a single school district by authority of 55 S.C. Acts and Joint Resolutions 470, § 1 (1967), as amended, which states:

The eight school districts in Charleston County are hereby consolidated into a single school district to be known as the Charleston County School District, which shall be a body politic and corporate . . . and shall be vested with all of the powers, duties and assets of the school districts. The areas of the respective eight school districts are hereby created as special districts for the administrative purposes set forth in this act, and shall be known as constituent districts, and the respective boards of trustees of the several school districts shall serve as trustees of the respective constituent districts, and shall perform the functions delegated and devolved upon trustees in the constituent districts in this act.

The 1967 Act, supra, next sets out in Section 5 the specific powers, duties, and responsibilities for the Board of Trustees of Charleston County School District, which are expressly nominated by the Act to be ‘in addition to the duties, powers, and responsibilities now provided by law for county boards of education and for school district trustees other than those devolved upon the constituent trustees in Section 6 and 7 of this Act.’ See 55 S. C. Acts and Joint Resolutions, 470, 472, § 5 (1967). None of the duties and responsibilities enumerated in Section 5 deal specifically with inter-district student transfers within Charleston County.

*2 With regard to the powers of the trustees of the constituent districts, referred to in Section 5 of the 1967 Act, it is stated: The trustees in each of the constituent districts shall have the power in their respective districts, subject to the appeal to the Board of Trustees of the Charleston County School District in the manner provided in Section 21–247, et. seq., of the Code of Laws of South Carolina (1962) (now S.C. Code ann. § 59–19–510, et seq. [1976]):

(1) To transfer any pupil from one school to another within the same constituent district so as to promote the best interest of education, and determine the school within such constituent district in which any pupil shall enroll; . . . 55 S.C. Acts and Joint Resolutions, 470, 474, § 7(1) (1967). (Emphasis added)

Here, again, although Section 7 of the 1967 Acts specifically reserves to the constituent districts the duty and responsibility for intra-district pupil transfers, this Section of the Act does not concern itself with inter-district transfers.

It should be observed that under the general law, as found in S. C. Code Annotated, § 59–19–90(9) (1976), the board of trustees of any school district has the broad power ‘to transfer any pupil from one school to another so as to promote the best interest of education’. See 1952–53 Ops. Att'y. Gen., page 202. Under the 1967 Act, supra, for Charleston County, however, it is clear that this power, at least in part, was vested in the constituent boards of trustees to make transfers within their respective districts, subject to appeal to the Board of Trustees of Charleston County. Where there exists an ambiguity or hiatus between the general law and the local law dealing with student transfers between constituent districts in Charleston County, the statutes should be construed in harmony with one another where this will not do violence to the Legislative intent. Statutes in pari materia have to be construed together and reconciled, if possible, so as to render both operative. See Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376, 378 (1970).

Generally speaking, it is contemplated that pupils will attend school within the school district in which they reside. See S. C. Code Annotated, § 59–63–30 (1976); 1964–65 Ops. Att'y. Gen., No. 1840, page 95. However, the General Assembly has recognized that, in certain instances, it is appropriate to provide for pupils residing in one county to attend schools in an adjacent county if such schools are closer (S. C. Code Annotated, § 59–63–480 [1976]), or to attend schools in an adjacent district if ‘the person is so situated as to be better accommodated at the school of an adjoining school district’ (S. C. Code Annotated, §

59–63–490 [1976]). In both of these instances, no transfer can occur unless the appropriate school authorities (either the county boards of education, or the boards of trustees) consent thereto. Further, in the case of a transfer between adjacent districts, any action by the district board of trustees is subject to appeal to the county board if one of the affected districts withholds consent unreasonably or capriciously. See *S.C. Code Annotated*, § 59–63–510 [1976]; 1970–71 Ops. Att’y. Gen., No. 3150, page 110. Where, on one hand, the Legislature has undertaken through the 1967 Act, *supra*, to create special administrative constituent districts within Charleston County which have the power to direct student transfers within the constituent districts, as would a district board of trustees under general law; and, where under general law, it is recognized that inter-district transfers should be permitted under certain limited circumstances, it is the opinion of this Office that the general and local law should be construed so as to provide a procedure for approval or disapproval of the transfers between adjoining constituent districts in Charleston County that accords with the procedures for student transfers between adjoining school districts operating under general law. See *S. C. Code Annotated*, § 59–63–490 and § 59–63–510 (1976).

*3 On that basis, a pupil who is a resident of a constituent district in Charleston County may be permitted to attend a school in an adjacent district provided that the board of trustees of the constituent district in which the pupil resides determines that the pupil ‘is so situated as to be better accommodated at the school of an adjoining school district.’ See 1964–65 Ops. Att’y. Gen., No. 1840, page 95.

There are no South Carolina cases which construe the language ‘so situated as to be better accommodated’ as used in Section 59–63–490. In the 1964–65 opinion, *supra*, the Attorney General stated that the ‘phrase (‘better accommodated’) should be used in its plain and ordinarily accepted sense.’ It is our opinion that this language requires the board of trustees of the district in which the person resides to view each request for transfer on its own merits. Further, the board must find a set of circumstances (which might include consideration of such conditions as the proximity of the schools to the residence, the kind and character of the roads between the schools and residence, the means of transportation between each school, school conditions such as crowding, special schools or curricula which more adequately meet the needs of students with learning problems, or requiring special care or training, and other similar matters) which place the person requesting the transfer in a singular situation relative to other persons residing in the district, such that the person is ‘better accommodated’ in a school in an adjoining district. See *State v. Davis*, 238 Ind. 563, 151 N.E.2d 495, 497 (1958); *Edwards v. State*, 143 Ind. 84, 42 N.E. 525, 527 (1895). Conditions upon which a transfer may be made may exist one year, and not exist any year thereafter. See *Edwards v. State, supra*. 42 N.E. at 527.

If the determination is made in favor of the student requesting the transfer, the transfer can be made, provided the board of trustees of the constituent district in which the school is located consents thereto. See *S. C. Code Annotated*, Section 59–63–490 (1976). If either the board of trustees of the constituent district in which the person is a resident, or the board of trustees of the adjacent constituent district to which the transfer is requested, do not consent, the decision can be reviewed by the Board of Trustees of Charleston County, after hearing, in order to determine if consent has been capriciously or unreasonably withheld.¹ See *S. C. Code Annotated*, Section 59–63–510 (1976). If the Charleston County Board of Trustees finds that the constituent board has acted unreasonably or capriciously, it may order the transfer. However, unless an appeal is taken from an adverse decision of the constituent districts, the Board of Trustees of Charleston County has no authority to authorize or disapprove a transfer between adjacent constituent districts. *cf.* 1964–65 Ops. Att’y. Gen., No. 1840, page 95, 96.

CONCLUSION:

*4 A transfer between adjoining constituent districts in Charleston County is permitted, provided that the constituent district in which the person requesting the transfer resides, finds that the person is so situated as to be better accommodated at the schools of an adjoining school district. If the constituent district in which the person is residing makes such a finding, and the adjacent constituent district to which the transfer is requested consents to the transfer, the transfer then can be made. If the board of trustees of either constituent district withholds consent, an appeal can be made to the Board of Trustees of Charleston County, which is empowered to review the decision to determine if consent was withheld unreasonably or capriciously. The Board of Trustees of Charleston County may order the transfer if it so determines that either constituent district acted unreasonably or capriciously.²

Nathan Kaminski, Jr.
Assistant Attorney General

Footnotes

- 1 An appeal from a decision of a constituent board made to the Board of Trustees of Charleston County would be taken pursuant to the procedure set out in S. C. Code Annotated, Section 59-19-510 (1976).
- 2 This opinion is confined solely to an interpretation of South Carolina law as it applies to the question presented. A review of the published federal court opinions relating to Charleston County School District Number 20 (See [Brown v. School District No. 20](#), 226 F.Supp. 819 [E.D.S.C. 1963], aff'd., per curiam, 328 F.2d 618 [4th Cir. 1964]; [Whittenberg v. Greenville County School District](#), 298 F.Supp. 785 [D.S.C. 1969]) does not provide assistance in resolving the question presented. The federal court opinion forwarded with your letter, [Brown v. School District No. 20](#), C/A No. 7747 (D.S.C. Filed March 18, 1977) does not appear to address the issue of transfer between constituent districts. It may be that unpublished court opinions, or attendance plans required by federal agencies, bear on this question, and it would be necessary to consult appropriate federal authorities on this matter.
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