

1977 S.C. Op. Atty. Gen. 325 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-400, 1977 WL 24736

Office of the Attorney General

State of South Carolina

Opinion No. 77-400

December 19, 1977

**\*1 In Re: Lexington County Superintendent of Education and Lexington County Board of Education**

The Honorable Nikki G. Setzler  
State Senator  
1309 Canary Drive  
West Columbia, South Carolina 29169

Dear Senator:

In response to your letters of October 10 and December 1, 1977, I submit the following information.

The following statutes all relate to the office of County Superintendent of Education of Lexington County and provide essentially as set forth.

A. Statutes Generally Relating to County Superintendents of Education (Code of Laws, 1976)

Section 59–13–10 provides for the election of county superintendents of education in each county except as otherwise provided. The statute fixes the term at four years, and requires the furnishing of a fidelity bond and the taking of an oath. Section 59–13–30 fixes the commencement of the term of office as July 1.

Section 59–13–40 provides for the filling of a vacancy in the office of county superintendent by the State Board of Education.

Section 59–13–50 provides that the governing body of each county shall furnish the county board of education for the use of the county superintendent of education a proper office and shall supply fuel, lights, stationery, and such other incidentals necessary for the proper functioning of the office.

Section 59–13–60 provides that each superintendent of education shall assume such responsibilities and perform such duties as may be prescribed by law or by rules and regulations of the State Board of Education or as may be assigned or prescribed by the county board of education or the district board of trustees.

Section 59–13–70 requires that the county superintendent shall keep a record of bonds issued by the respective school districts, setting forth pertinent data pertaining to such bonds.

Section 15–13–80 provides that the county superintendent shall keep a register of all claims approved by him and of such other matters as the State Superintendent of Education shall require of him.

Section 59–13–90 requires that the county superintendent of education, before the 15th day of July each year, report to the County Treasurer, by school districts, all school claims approved by him for the school year last preceding.

Section 59–13–100 provides that the county superintendent shall receive annually, in addition to his salary, such sums as may be necessary to pay the actual expenses incurred by him in attending educational meetings and in visiting schools of other counties to become familiar with their management and mode of teaching.

Section 15–13–110 provides for the payment of expenses incurred as above set forth on warrant of the county board of education.

Section 59–13–120 requires that teachers, principals and county superintendents shall file, within two weeks after the close of the session of their schools, a full and accurate report as required by law.

\*2 Section 59–13–130 requires that all private schools report to the county superintendent, upon request therefor of the county wherein such school is located, the number of pupils receiving instruction, the number in regular attendance, the number of teachers employed, and such other facts as will show the grade and amount of educational work being done in such private school.

Section 59–13–140 provides that each county superintendent file with the State Board of Education annually a full and accurate report of all schools under his supervision, with such statistics and information as the State Board may require.

Section 59–13–150 provides that the annual report of the county superintendent shall contain the complete statistics of all public schools within his county.

The foregoing statutes are of Statewide application unless provision is otherwise provided for in a particular county. They are referred to herein as a prelude to consideration of statutes relating specifically to the office of County Superintendent of Education for Lexington County.

Section 59–15–20 provides that the county superintendent of education may consult with the county board when in doubt as to his official duty.

#### B. Special Statutes Relating to County Superintendent of Education for Lexington County

Section 21–3401 makes the county superintendent of education a member ex officio of the board of education.

Section 21–3404 provides that the county superintendent shall devote his whole time to his office and shall not engage in any other business or vocation.

Section 21–3405 provides that the chairman of the board of trustees in the respective school districts shall, subject to the approval of the school board of trustees and the county superintendent, draw warrants for the payment of premiums due the State Budget and Control Board for fire and tornado insurance.

Section 21–3421.1 provides that the expenses of the office of the county superintendent of education and the county board of education shall be paid by each of the school districts of the county prorated among them on the basis of the previous year's pupil enrollment.

Section 21–3423 authorizes the auditor to levy a tax of 30 mills, receipts of which shall be divided among the five school districts of the county on a per pupil basis by the county superintendent of education. Where a district receives money from an adjoining county for children of such county attending schools in Lexington County, funds received therefrom shall be forwarded to the county superintendent of education and added to the receipts derived from the 30-mill levy for Lexington County.

#### C. General Statutes Relating to County Board of Education

Section 59–15–10 provides for county boards of education in each county, except as otherwise provided, to be composed of seven members, six appointed by the Governor on recommendation of the delegation from the county. In counties where the

superintendent of education is elected, he shall be a member *ex officio* of the board and in counties where the superintendent is not elected by the people, the seventh member shall be appointed in the same manner as are the remaining six members.

\*3 Section 59–15–20. The board shall constitute an advisory body to the superintendent.

Section 59–15–30. A majority of the members shall constitute a quorum of the board.

Section 59–15–40. The board of education has authority to prescribe rules and regulations for the conduct of its business.

Section 59–15–50. Each member shall take the oath of office prescribed by the Constitution.

Section 59–17–20. The board may alter school district boundaries if:

(a) approved by the Senator and entire House Delegation, or

(b) on petition of four-fifths of the qualified electors of the school districts involved, or

(c) on petition of one-third of the qualified electors of each school district if approved in a subsequent election to be called by the board.

Section 59–17–40. The board may consolidate all of the school districts of the county in one school district. School districts of two counties may be consolidated by the joint action of the respective boards as provided in Section 59–17–20.

Section 59–17–50. The board may consolidate schools in school districts in whole or in part, in its discretion, to promote education.

Section 59–17–60. An order of such consolidation is to be filed with the clerk of the court and with the State Board of Education.

Section 59–17–80. School districts formed of parts of two or more counties under Section 59–17–40 may be dissolved as in Section 59–17–40.

Section 59–19–10. School districts operate under the management or control of trustees 'subject to the supervision and orders of the county board of education.'

Section 59–19–50. When the school districts are consolidated, the board initially appoints five trustees for each new school district; thereafter, successors are elected or appointed as provided by law.

Section 59–19–60. School trustees are subject to removal by the board after notice and hearing. Vacancies in such cases are filled by the board for the unexpired term.

Section 59–19–100. Where the county educational system operates as a unit, the county board or the educational governing body of the county has the powers and duties of trustees.

Section 59–19–160. When school district trustees accept grants, devises, gifts or bequests, the board shall approve a bond for faithful performance of such trust.

Section 59–19–250. Sale or lease of real or personal property of a school district must be done with the consent of the board of education.

Section 59–19–510. Any person aggrieved by a decision of the trustees of a school district in any matter of local controversy in reference to the construction or administration of school laws or the placement of any pupil in schools within the district may appeal to the board.

Section 59–19–520. Where the functions of the board of trustees and the board are combined, such appeal under 59–19–510 shall lie to the board from its original action.

Section 59–19–530. Hearings shall be prompt, fair and de novo before the board.

\*4 Section 59–19–550. The board shall issue its written order to each party upon its determination.

Section 59–25–10. No teacher related to a school district trustee within the second degree may be employed by a school district without the approval of the board unless a majority of the parents of children attending the school for which the teacher is to be employed requests such employment in writing.

Section 59–25–720. Any teacher alleging discrimination by a school district in fixing his salary may file a complaint with the board.

Section 59–25–730, 59–25–740, and 59–25–770 relate to procedures before the board upon a complaint of salary discrimination.

Sections 59–25–780, 59–25–790, 59–25–800, 59–25–840 and 59–25–260 relate to procedures before the board on salary discrimination complaints.

#### D. Special Acts Relating to Board of Education for Lexington County

Upon receipt of petition directed to the county board of education and signed by 20 percent of the qualified voters of a school district which voted not to elect trustees in the election held at the same time as the general election in 1974, the board shall order an election. The county superintendent prepares the ballots, names the managers and designates the polling precincts. The board canvases the ballots and declares the results.

Section 21–3412.1. County board calls for election to be held before expiration of term of any member of board of trustees. Ballots are to be prepared by the county superintendent.

Section 21–3401. The county board consists of six members, one of whom is the superintendent of education *ex officio*. Members are appointed by the Governor on recommendation of a majority of the Delegation of Lexington County, including the Senator. Members are to be qualified electors of the several school districts of the county.

Section 21–3402. Staggered terms are provided for members, with terms to be for five years.

#### CONCLUSIONS

In a majority of counties the office of superintendent of education has been abolished. Invariably, the duties are devolved on a designated officer; for example, Marion County, where the duties are devolved on an educational clerk appointed by the Delegation (71 Acts 88) and Cherokee County, where the duties are devolved on the superintendent of schools (70 Acts 2001). Such devolution of duties is rendered necessary from a practical standpoint because of references which various statutes contain relating to the county superintendent of education and for the additional reason that a central countywide official, by whatever name designated, is desirable to administer the school system of a county as a unit even though it may consist of a number of school districts. If the office of county superintendent were to be abolished, its duties would have to be placed in some official or agency. Similarly, if the board of education should be abolished, its duties would necessarily be required to be exercised by

some countywide authority, If, for example, the board of education were abolished and its duties not placed in an agency, the general statute relating to appeals from decisions of county boards of trustees would be impossible to fully implement. Other illustrations of the problems that would be presented are the exercise of authority to consolidate school districts (Section 59–17–20); the disposition of teacher discrimination controversies (Sections 59–25–10, *et seq.*); and the general authority given to the board of education to supervise the operation of the school districts (Section 59–19–10). The only alternative would be the abandonment of countywide supervision over the educational interests of the county.

\*5 The office of county superintendent and the board of education may be abolished by action of the General Assembly until at least January 1, 1980, pursuant to Section 3 of Act No. 283 of 1975, the ‘home rule’ legislation. In accordance with [Moye v. Caughman](#), 217 S.E. 86, special laws to accomplish the foregoing can, in my opinion, be enacted without violating the provisions of the Constitution. As noted, special laws will continue in effect until January 1, 1980, unless earlier repealed by the General Assembly. After that date, county councils will be authorized to enact ordinances in conflict with special laws relating to their respective counties. There is uncertainty as to whether or not the cessation of the legal effect of all special laws as of January 1, 1980, and the authority of county councils to enact ordinances in conflict therewith after that date includes educational matters, but a court determination would be necessary to answer this question.

Additionally, the abolition of the officers in question is a matter which must be submitted to the Civil Rights Division of the Department of Justice in order to make its implementation effective. Where an office is elective, as in the case of the county superintendent, there may be some reluctance on the part of the Department of Justice to approve such change. It has, in fact, disapproved a change of that nature for one county but the problems in that county are markedly different from those existing in Lexington County.

Set forth below are references to typical statutes where the superintendent's office has been abolished:

1968 Acts 3123, Chester County

1968 Acts 2433, Edgefield County

An example of the abolishment of both county superintendent of education and board of education and the devolution of their duties upon the governing body of the county are the Acts relating to Richland County (69 Acts 131) and Cherokee County (67 Acts 356).

I hope very much that the foregoing is in compliance with your request and if there is anything further that you may desire on this, please call upon me.

With best wishes,  
Very truly yours,

Daniel R. McLeod  
Attorney General

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