

1978 S.C. Op. Atty. Gen. 107 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-77, 1978 WL 22558

Office of the Attorney General

State of South Carolina

Opinion No. 78-77

May 3, 1978

***1 SUBJECT: Education; School Districts**

Under the South Carolina Education Finance Act of 1977, the provisions of § 6(3)(b) regarding the establishment of school advisory councils are construed:

- (1) to require that the advisory councils be constituted at each school by the board of trustees prior to July 2, 1978, the effective date of the Act;
- (2) to allow the school board of trustees to establish written regulations governing the period of time for which members of advisory councils may serve;
- (3) to require that schools with grades 10 through 12 provide student representatives on the advisory councils;
- (4) to restrict students serving on advisory councils to those in grades nine and above;
- (5) to utilize the general definition of teacher found in [S.C. Code Ann. § 59-1-130 \(1976\)](#);
- (6) to require that elected teacher representatives serve only on an advisory council for the school where the teachers are employed, and that the elected parent representatives must have children in the school on whose advisory council they serve.
- (7) to permit principals to appoint at least two members to the advisory council;
- (8) to allow the school boards to establish some written criteria concerning age, residence, citizenship, etc. for those appointed to the advisory council;
- (9) to require only one advisory council at each school, even though a school may have separate 'campuses';
- (10) to apply to an area vocational center only if it is under the jurisdiction of a 'local school board' and can be considered a 'school' within the meaning of the Act;
- (11) to allow an individual to serve on more than one advisory council, subject to certain restrictions; membership on more than one advisory council would not constitute dual office holding.

TO: Dr. Cyril B. Busbee
State Superintendent of Education

QUESTIONS:

1. By what date must the advisory council be constituted?

2. What is the minimum as well as the maximum period of time members may be elected to advisory councils?
3. If a school does not have grade nine, but has only grades ten through twelve, is it exempted from the student representation requirement?
4. May schools elect to have student representation below grade nine?
5. What is the definition of 'teacher' for the purposes of the advisory council provisions of the 1977 School Finance Act?
6. Are the parent and faculty representation requirements restricted (a) to the election of a parent who has children in the school in which the parent will serve as a member of the advisory council, and (b) to the election of a teacher who is a faculty member of the particular school for which the advisory council is elected?
7. Could a principal be prohibited from appointing members of the advisory council?
8. Are there any restrictions on the principal's appointees as to age, residence, citizenship, etc?
9. If a school is multi-campus, are advisory councils required to be established at each campus?
- *2 10. Are area vocational centers required to have advisory councils?
11. It is permissible for an individual to serve on more than one advisory council? Would this violate the dual office holding provisions of the South Carolina Constitution?

STATUTES AND CASES:

[South Carolina Constitution, Article XVII, Section 1A;](#)

60 STAT. Act No. 163, §§ 6(3)(b), 9 (1977), cited as 'South Carolina Education Finance Act of 1977';

[S.C. Code Ann § 59-1-120 \(1976\);](#)

[S.C. Code Ann. § 59-1-130 \(1976\);](#)

Bruner v. Smith, 188 S.C. 75, 98 S.E. 184, 187 (1938);

1975 Ops.Atty.Gen. No. 4126, p. 196;

73 C.J.S., Public Administrative Bodies & Procedures, § 93;

82 C.J.S., Statutes, § 411;

2A Sutherland, Statutory Construction § 46.05, p. 56 (1973).

DISCUSSION:

Section 6(3)(b) of the South Carolina Education Finance Act of 1977 (60 STAT. Act No. 163) provides, in part:

Each school board of trustees shall establish an advisory council at each school in the district composed of at least two parents, elected by the parents of the children enrolled in the school; at least two teachers, elected by the faculty; at least two students in schools with grades 9 and above elected by the students; other representatives of the community and persons selected by the principal; provided, however, that the elected members of the committee shall comprise at least a two-thirds majority of the membership of the committee. These councils shall be constituted in each school no later than January 1, 1978. Each council shall assist in the preparation of the annual school report required in this section and shall provide such assistance as the principal may request as well as carrying out any other duties prescribed by the local school board. The local school board shall make provisions to allow any council to file a separate report to the local school board if the council deems it necessary. However, no council shall have any of the powers and duties reserved by law or regulation to the local school board.

The questions posed as to meaning and requirements of these provisions are:

1. By what date must the advisory council be constituted?

Section 6(3)(b) states that advisory councils should be 'constituted in each school no later than January 1, 1978.' However, the effective date of the School Finance Act is July 2, 1978. See 60 STAT. Act No. 163, § 9. Although there appears to be some conflict between these dates contained in the statute, words used in the law may be regarded as surplusage under some circumstances, but generally speaking they should be given effect if possible. [Bruner v. Smith, 188 S.C. 75, 198 S.E. 184, 187 \(1938\)](#). Parts of an act may become effective at different times where expressly stated in the act. 82 C.J.S., Statutes, § 411. Here it appears the Legislature intended that advisory councils be established by the school districts prior to July 2, 1978, so that they could begin functioning immediately when the operative provisions of Education Finance Act became effective. Therefore the advisory councils at each school should be constituted by the school board of trustees prior to the effective date of the other provisions of the act, as is expressly provided for in the statute.

- *3 2. What is the minimum as well as the maximum period of time members may be elected to advisory councils?

The Finance Act itself does not specify any particular period for holding membership on the advisory council. Viewing the law in its entirety, it can be assumed the General Assembly intended to give each school board of trustees some discretion in the formulation of the advisory councils. Aside from the lack of specificity as to the terms of office of council members, there also are no provisions governing the actual mechanics of electing members, the times the councils should meet, council officers, quorums, etc. Written regulations setting forth such provisions should be established by the school board of trustees in such a way as to implement the general statutory directive, and legislative goals. 73 C.J.S. Public Administrative Bodies & Procedures, § 93. Staggered terms for the elected representatives on the council and annual appointments where provided would seem to be in keeping with the overall intent to maintain a representative advisory council.

3. If a school does not have grade nine, but has only grades ten through twelve, is it exempted from the student representation requirement?

The act requires each council to be composed of 'at least two students in schools with grades 9 and above elected by the students', in addition to other specified council representatives (emphasis supplied). The fact that the words 'and

above' are used in the statute indicates that a school with only grades ten through twelve would not be exempted from the student representation requirement.

4. May schools elect to have student representation below grade nine?

Nothing in the act states such representation is allowed. The language pertaining to advisory councils allows some discretion as to the number of representatives in each class—'at least' two students, and 'at least' two teachers— but the statute is specific as to the classes of persons who are to be representatives. The act specifically provides for elected student representation on the council for those students in grades nine and above, but in no other cases. It is the opinion of this Office that students in grades below nine may not elect, or serve as, student representatives.

5. What is the definition of 'teacher' for the purposes of the advisory council provisions of the 1977 School Finance Act?

Advisory Councils are to be composed of at least two 'teachers' in addition to its other members. In view of the lack of definition of this term, it would seem entirely reasonable for the purposes of construing this provision to adopt the general definition of 'teacher' set forth in [S.C. Code Ann. § 59-1-130 \(1976\)](#): "Teacher' means any person who is employed either full-time or part-time by any school district either to teach or to supervise teaching.'

6. Are the parent and faculty representation requirements restricted (a) to the election of a parent who had children in the school in which the parent will serve as a member of the advisory council, and (b) to the election of a teacher who is a faculty member of the particular school for which the advisory council is elected?

*4 The act itself does not contain any explicit requirement that teacher and parent representatives be directly affiliated with the particular school on whose advisory council the representative will serve. However, in construing the statute, 'one must proceed as he would with any other composition—construe it with reference to the leading idea or purpose of the whole instrument.' 2A Sutherland, [Statutory Construction](#), § 46.05, p. 56 (1973).

The advisory council is to assist in preparing the school's annual report which will recommend program changes in each pupil classification. The report also is to 'present an explicit statement of the needs of the students,' and 'define specific goals and objectives' in addition to 'propos[ing] an identifiable strategy for priorities in the expenditure of funds to achieve the stated objectives.' Section 6(3)(b), [supra](#). Clearly, a familiarity with the needs of a particular school is needed in order to carry out this function properly. Teachers from other schools would not normally possess such knowledge to the same extent as would teachers working in the particular school for which the annual report is prepared. Likewise, parent representatives would not be in the best position to serve in an advisory capacity and comment on the conditions and special needs of the students of a particular school if their children are not attending that school.

It is the opinion of this Office that the General Assembly intended that elected teacher representatives serve only on an advisory council for the school where the teachers are employed, and that the elected parent representatives must have children in the school on whose advisory council they serve.

7. Could a principle be prohibited from appointing members of the advisory council?

The language of the Finance Act states: 'Each school board of trustees shall establish an advisory council . . . composed of . . . other representatives of the community and persons selected by the principal.' (emphasis supplied). No number is specified, but use of the plural 'persons' and the mandatory directive 'shall', mean the principal must always be able

to select at least two members. Please remember, however, that the statute provides that the elected representatives shall always constitute at least a two-thirds majority of the membership of the council.

8. Are there any restrictions on the principal's appointees as to age, residence, citizenship, etc?

The act does not specify any such restrictions. Since the school boards have general authority over the constitution of the council subject to the provisions of the statute, the board may establish by written regulation some criteria of this nature if necessary to insure that the objectives of the law are met.

9. If a school is multi-campus, are advisory councils required to be established at each campus?

The act does not address itself to the question of different 'campuses' within a single school. It speaks generally only in terms of 'schools.' Because of this fact, and also the fact that each campus is only part of a single school, there is no requirement that separate advisory councils be established for each campus within a single school.

*5 10. Are area vocational centers required to have advisory councils?

The Act states that '[e]ach school board of trustees shall establish an advisory council at each school in the district. . . .' If an 'area' vocational center is under the jurisdiction of a 'local school board' and can be considered a 'school' within the meaning of the act, then such a vocational school would be subject to the requirements concerning advisory councils. A public school is defined under § 59-1-120 as a 'school operated by publicly elected or appointed school officials in which the program and activities are under the control of these officials and which is supported by public funds' and it would appear reasonable to adopt this definition for use here.

11. It is permissible for an individual to serve on more than one advisory council? Would this violate the dual office holding provisions of the South Carolina Constitution?

The language of the act does not specifically prohibit an individual from serving on more than one advisory council, although teacher and parent representatives would be subject to the restrictions discussed in Question 6.

Membership on more than one advisory council does not violate South Carolina's Constitutional prohibition against dual office holding ([South Carolina Constitution, Article XVII, Section 1A](#)) since advisory committees or councils are not 'offices' within the Constitutional prohibition. 1975 Ops. Att'y. Gen., No. 4126, p. 196.

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