

1976 WL 30558 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 20, 1976

\*1 In the absence of law or State Board regulations to the contrary, the State Superintendent of Education has the authority to establish administrative policies for the payment of State aid for teachers' salaries. This authority has not been affected by the recently enacted Public School Employee Sick Leave Act.

Dr. Cyril B. Busbee  
State Superintendent of Education

QUESTIONS:

1. What authority does the State Superintendent of Education have to establish administrative policies identifying teaching positions and fixing the length of time such positions are paid by State aid funds?
2. What effect, if any, does the new Public School Employee Sick Leave Act have on the payment of State aid for teachers?

AUTHORITIES:

1976 Act R789, 1976 Annual Appropriations Act, Part I, Section 31.

1975 Act No. 237, 1975 Annual Appropriations Act, Part II, Section 3, 59 Stat. at Large 333, 548 (See also 21-258, Code of Laws of South Carolina as amended).

Section 21-251, et seq., Code of Laws of South Carolina as amended.

Section 21-23(2), Code of Laws of South Carolina as amended.

[Parker v. Brown, 10 S.E.2d 625 \(SC 1940\).](#)

63 Am.Jur.2d, Public Officers and Employees, Section 265, Incidental and Implied Powers.

68 Am.Jur.2d, Schools, D. Rules and Regulations, Section 53 Generally.

73 C.J.S., Public Administrative Bodies and Procedure, C. Rules and Regulations, Section 95, Power to Make, Officers Making.

1976 Act R724 (Public School Employee Sick Leave Act).

DISCUSSION:

Section 21-23(2) provides that the State Superintendent of Education shall have 'general supervision over and management of all public school funds provided by the State and Federal Governments.' In order to provide the local districts with the most funds possible under the State aid provisions, the State Department of Education under the

State Superintendent has at the beginning of each school year taken the number of teaching positions for a particular district and applied those to the number of highest certified teachers in that district. In addition, the State Department for bookkeeping purposes carries each position on the State aid list until such time as a particular teacher misses up to 20 consecutive days of work before dropping that position from the State aid list and substituting with the next highest qualified teaching position or the teaching replacement, whichever has the higher qualification. Consequently, it is possible that any change in the State aid position in a district during the school year could have the effect of either increasing the amount of State aid or decreasing the amount of State aid paid to that district for teaching positions depending on whether the replacement was more or less qualified than the preceding position.

While the General Assembly has established the general scheme of State aid allocation for teachers' salaries, it did not establish specific requirements for the management of such a State aid system. Sections 21-251, *et seq.*, *supra*. Nor has the State Board of Education promulgated any rules regarding the management and operation of the State aid system. In the absence of any specific requirements in the law or State Board regulations, the State Superintendent pursuant to Section 21-23(2), *supra*, has the necessary authority to establish administrative policy for the management and operation of this State aid system, including the designation of positions and method of payment. See 63 Am.Jur.2d, Public Officers and Employees, *supra*; 68 Am.Jur.2d, Schools, Section 53, *supra*; and 73 C.J.S., Public Administrative Bodies and Procedure, Section 95, *supra*.

\*2 While the funds for the State aid for teachers' salaries is open-ended, the appropriations designated for the operation of the State Department of Education, which is responsible under the State Superintendent for the actual implementation of the State aid system is not unlimited. Certainly, it is appropriate for the State Superintendent to consider this factor of State Department's budget as well as any other factor in his establishment of administrative policies in the operation of the State aid system. Furthermore, this conclusion is consistent with the court's opinion of the discretion of administrative officers: 'the law necessarily grants certain discretion to its officers in handling the public business. In one instance it may be wise for public officers to pursue one course, in another instance, another course. Those charged with protecting the public interest should view that interest as supreme, should consider what is best for the public, and should be free at all times to prosecute the course that appears to be in the public interest.' *Parker v. Brown, supra*, p632.

The 1976 act on public school employee sick leave makes no provision for State aid. It simply provides for a minimum requirement for such employee sick leave. The State Superintendent of Education, therefore, continues to have authority to make such administrative policies for the maintenance and operation of the State aid system until such time as there is provision to the contrary in State law or State Board regulations.

CONCLUSION:

The establishment of administrative policies to establish the details of the operation of the State aid system for teachers' salaries is essential to the duty of the State Superintendent of Education to supervise and manage all the public school funds pursuant to Section 21-23, Code of Laws of South Carolina. This duty and corresponding authority are not in conflict with or altered by the Public School Employee Leave Act.

Hardwick Stuart, Jr.  
Assistant Attorney General

1976 WL 30558 (S.C.A.G.)