

1975 WL 28915 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 13, 1975

*1 Hon. Cyril B. Busbee
State Superintendent of Education
1429 Senate Street
Columbia, South Carolina 29201

Dear Mr. Busbee:

You have inquired as to whether a Board of Education can be held liable for acts performed in the course of discharging their official duties and responsibilities. I assume your inquiry is directed to potential liability under [42 U.S.C.A. § 1983](#) for acts alleged to be violative of a right or rights protected by the Federal Constitution. An action in state courts against a board of education for acts which lie within the authority of the board as provided by constitutional or statutory provisions would be barred by the doctrine of sovereign immunity.

Two recent decisions of the United States Supreme Court have held that state government officials are not exempt, by virtue of any absolute immunity, from liability under [42 U.S.C.A. § 1983](#). In [Scheuer v. Rhodes, 94 S.Ct. 1683, 416 U.S. 232 \(1974\)](#), the Court held that while public officials were not absolutely immune from liability under [§ 1983](#), they were entitled to immunity under prior precedent and in light of the obvious need to avoid discouraging effective official action by public officers charged with a considerable range of responsibility and discretion, only if they acted in good faith. In noting this limited immunity, the Court said:

[I]n varying scope, a qualified immunity is available to officers of the executive branch of government, the variation being dependent upon the scope of discretion and responsibilities of the office and all the circumstances as they reasonably appeared at the time of the action on which liability is sought to be based. It is the existence of reasonable grounds for the belief formed at the time and in light of all the circumstances, coupled with good-faith belief, that affords a basis for qualified immunity of executive officers for acts performed in the course of official conduct. [416 U.S. at 247-248](#). (Emphasis added.)

In a more recent decision, [Wood v. Strickland, 43 U.S.L.W. 4293 \(February 25, 1975\)](#), the Supreme Court held that while on the basis of common law tradition and public policy, school officials are entitled to a qualified good-faith immunity from liability for damages under [§ 1983](#), they are not immune from such liability if they knew, or reasonably should have known, that the action they took within their sphere of official responsibility would violate the constitutional rights of the student affected, or if they took the action with the malicious intention to cause a deprivation of such rights or other injury to the student. In such an instance, a compensatory award would be appropriate only if the school officials acted with such an impermissible motivation or with such disregard of the student's clearly established constitutional rights that their action could not reasonably be characterized as being in good faith.

Thus, in [Wood](#), as [Scheuer](#), the immunity of a public official is predicated upon the performance of his duties in good faith.

*2 On the basis of the decisions noted above, I am of the opinion that the members of a board of education would not be subject to a compensatory award so long as they act in good faith with appropriate regard for the constitutional rights of the persons over whom they have jurisdiction.

You have also inquired as to whether a board of education can purchase liability insurance. Under provisions of Act No. 1154 (1974), a copy of which I am enclosing, the State Budget and Control Board is authorized to provide insurance for personnel employed by the State, its departments, agencies, institutions, commissions or boards, so as to protect such personnel against tort liability arising in the course of their employment. This authorization extends to all political subdivisions of the State, including school districts.

Kind regards,

C. Tolbert Goolsby, Jr.

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