

1974 WL 27621 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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***1 SUBJECT: Powers of State Board for Technical and Comprehensive Education.**

Dr. Charles E. Falmer
Executive Director
State Board for Technical and Comprehensive Education

Resolution of the questions posed by Dr. Palmer is extremely complicated due to the maze of legislation that has been enacted without uniformity or coordination regarding technical education. Under the existing statutory schemes it is doubtful that a clear delineation of the powers and duties of the State Board as opposed to those of the regional centers can be established. Clearly, legislation is needed to define the extent of State Board Control and the degree of local autonomy enjoyed by the various technical education and manpower training institutions.

One of the principal problems involved in determining the power of the State Board, and the limitations on that power, stems from the fact that the various institutions created by statute to promote technical education in various areas of the State do not operate under identical statutory provisions. This lack of uniformity makes determination of the exact relationship between the State Board and the various technical education centers extremely difficult.

The measure of the powers and duties of the State Board must be found within the statute that created it. Since administrative bodies are unknown to common law and derive their authority solely from statutory provisions, such bodies possess only such powers as are conferred, expressly or by reasonably necessary implication, or such as are merely incidental to the powers expressly granted. [Piedmont & Northern Ry. Co. v. Scott 24 S.E.2d 353, 202 S.C. 207 \(1943\)](#), In 73 C.J.S. 'Public Administrative Bodies and Procedure' § 49 at 371 the rule concerning powers of administrative agencies was thus stated.

'The powers of administrative agencies, bodies or officials must affirmatively appear from the enactment under which they claim to act.'

In case of conflicts between state agencies, it has been held that one statutory creature is not given jurisdiction over the activities of another unless the law unmistakably so provides. 1 Am. Jur. 'Administrative Law' § 136 at 947. Thus, any power the State Board may have over the various technical education centers which have been created by statute must unmistakably appear in the statute creating the State Board. Unless the intent of the legislature to subordinate all technical education centers to the State Board is manifested in Act No. 1268 which created the Board, the State Board cannot through its own rules and regulations establish control over such institutions. The rule making power conferred on the State Board cannot be used to extend jurisdiction of the Board. In 73 C.J.S. 'Public Administrative Bodies and Procedure' § 50 at 374 limitations on the powers of an administrative body to make rules and regulations was noted: 'The general power conferred on an administrative board by a statute vesting it with all powers necessary to carry out the provisions of the act that created it has been held not to extend its jurisdiction, and to relate only to those matters over which it has been given jurisdiction.'

*2 Thus, unless it can be clearly shown that the various technical education centers have been brought under the jurisdiction of the State Board, state wide policy rulef and regulations of the Board cannot be imposed on these institutions.

In [Piedmont, supra](#), the Supreme Court of South Carolina noted that the powers of administrative bodies must be clearly set out by the statute which created them:

‘ . . . the Supreme Court of the United States has pointed out that asserted powers are not to be derived from mere inference. They must be founded upon language in the enabling acts which admits of no other reasonable constuction.’

In [Banks v. Batesburg Hauling Co. 24 S.E.2d 496, 202 S.C. 461 \(1943\)](#) the Court examined the rule making powers of administrative agencies:

‘Clearly a rule cannot be made by an administrative body which would materially alter or add to the law; a rule to be valid may only implement the law.’

A later South Carolina decision, however, gave a somewhat more expansive view of the powers of administrative bodies. In [Beard-Loney v. Durley 49 S.E.2d 564, 213 S.C. 380 \(1948\)](#) the Court said:

‘Even a governmental body of limited powers is not in a strait jacket in the administration of the laws under which it operates. Those laws delimit the field which the regulations may cover. They may imply or express restricting limitations of public policy. And of course they may contain express prohibition. But in the absence of such limiting factors it is not to be doubted that such a body possesses not merely the powers which in terms are conferred upon it, bur also such powers as must be inferred or implied in order to enable the agency to effectively exercise the express powers admittedly possessed by it. To say otherwise would be to nullify the statutory direction that the agency shall have power to make rules and regulations governing the exercise of its powers and functions.

Another issue that must be considered in reviewing the State Board's power concerns the extent of authority that can lawfully be delegated by the Legislature to the State Board. In [Cole v. Manning 125 S.E.2d 621, 240 S.C. 260 \(1962\)](#), the Court said:

‘ . . . the degree of authority that may lawfully be delegated to an administrative agency must in large measure depend upon such circumstances, including the legislative policy as declared in the statute, the objective to be accomplished, and the nature of the agency's field of operation.’

In [Terry v. Pratt 187 S.E.2d 884, 258 S.C. 177 \(1972\)](#), the Court again spoke of legislative delegation of power to an administrative body. The Court noted:

‘The legislature may not delegate to an administrative agency its power to make laws, but when a statute is complete on its face no unconstitutional delegation of legislative authority can be imputed to it by the fact that authority or discretion as to its execution is vested in an administrative officer, commission or board.’

*3 Thus, if the State Board is to establish state wide policies over the various technical education centers, its authority must clearly stem from the statute which created the Board. The Legislature can delegate to the State Board power to establish state wide policies governing the technical education centers but its intent to do so must be clear and unequivocal as the centers themselves are statutory creatures vested with varying amounts of power and authority.

In case of conflict between legislative grants of power to the technical education centers and the State Board, the rule ordinarily to be followed in such instances is that the last legislative expression will govern. [South Carolina Electric and](#)

[Gas Co. v. South Carolina Public Service Authority](#) 54 S.E.2d 777, 215 S.C. 193 (1949). Thus, should the powers and duties given the State Board conflict with those given the technical education centers, the State Board should prevail as it represents the last expression of legislative intent. Plus, should any provisions of the statutes establishing the centers be antagonistic or repugnant to the provisions of Act No. 1268 which created the State Board, such antagonistic or repugnant provisions could be considered as repealed by implication. See [City of Spartanburg v. Blalock](#), 75 S.E.2d 361; 223 S.C. 252, (1953). However, repeal by implication is not favored unless the antagonism is direct and admits of no other construction.

QUESTION NO. 1

See: Act No. 1268 (1972)

§§ 21-705 21

§ 21-1099.11

§ 21-1441

Act No. 967 (1962)

Act No. 906 (1962)

Act No. 743 (1962) amended by

Act No. 1141 (1968)

Section 4 of Act No. 1268 (1972) states, under powers and duties of the newly created State Board, that, 'The regional technical centers . . . will be continued under the auspices of the Board.'

Operation of the regional centers under the 'auspices' of the State Board clearly indicates some degree of subordination of such centers to the State Board. Act No. 1268 did not, however, expressly repeal any grants of power to the regional centers. Thus, while the State Board may have nominal control over the regional centers in a very vague, general sense, there is no apparent authority by which the State Board could coerce a regional center, acting under its own independent grant of power from the legislature, to conform to state-wide policies. Policies promulgated by regional centers under power granted them by the legislature could probably not be changed by State Board fiat.

QUESTION NO. 2

See: Act No. 1268 (1972)

§§ 21-651-21-659 (repealed by Act 1268)

§ 21-704

The Area Trade Schools were transferred from the State Board of Education to the advisory committee for Technical training by § 21-704, Act No. 1268 (1972) established the State Board for Technical and Comprehensive Education and gave the new Board all the assets and liabilities of the then existing Advisory Board. All institutions created and existing under control of the Advisory Board were passed to the new State Board. Provisions of legislation which established the

area schools and precluded local support activities remain valid expressions of legislative intent. Changes in methods of local support could only come from the legislature through amendment to § 21-704. While under the control of the State Board, there is no apparent and convincing authority for the Board to change the existing support scheme. Arguably, repeal of §§ 21-703 could be interpreted as a grant, by implication, of power to restructure the support scheme.

QUESTION NO. 3

*4 See: Act No. 1268 (1972)
Act No. 58 (1969)

Act No. 1268 creating the State Board places 'regional manpower centers' under the 'auspices' of the Board. As with the regional technical commissions, the Williamsburg Regional Manpower Center commission appears to be to some degree subordinate to the State Board. The duties and powers of the Williamsburg Commission are noted in Act no. 58 (1969). It appears that while the Williamsburg Commission may be subject to certain policies and regulations established by the State Board, revision of its status as established in Act No. 58 (1969) could be accomplished only by the legislature.

QUESTIONS NO. 4 and 5

See: § 21-651-59 (repealed by Act. 1268)
(same statutes as cited for question no. 1)

§ 21-704

Under provisions of § 21-704, control of the area trade schools was passed to the advisory committee for Technical Training. The committee was empowered to ' . . . merge and/or consolidate the trade schools into its system of local technical education centers in such manner as, in its opinion, will best the educational objectives of the technical training program;' When the State Board was created, it assumed all the powers formerly held by the advisory committee. Thus, the State Board assumed control of the designated area trade schools subject only to the provisions of § 21-704 which provide that the area institutions (1) shall continue to offer vocational programs to students in high schools of the area and (2) shall not be subject to any requirements of § 21-703 relating to county or area participation in the operation of local technical school facilities. However, the act which created the State Board repealed § 21-703, thereby perhaps negating the second proviso of § 21-704. It appears then, that the State Board has full control of the area trade schools and the status of such institution is dependent upon policies formulated by the State Board. Since the State Board was given power to merge the designated schools with the local technical education centers, the area schools would then apparently become 'local' in nature. No power seems to exist, however, to change the nature of the local centers into 'state' institutions.

Since the local centers are 'local' because of specific legislation creating these centers, the two Palmer Colleges appear to be 'state' institutions. Under Act No. 1268 (Section 3) power may exist to merge the Palmer Colleges into the local centers.

QUESTION NO. 6

See: Act No. 1268 (1972)
§ 21-651 (Repealed by No. 1268)

§ 21-704

Under § 21-704 control of Columbia TEC would appear to be fully under the control of the State Board (successor to the Advisory Committee). This control would apparently be limited once the State Board has merged Columbia TEC with the Richland-Lexington Area Commission. Once such merger has occurred, control over Columbia TEC would be subject to the same limitations as appear to exist in regard to its control over the area Technical Education Commission.

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