

1983 WL 182028 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 18, 1983

*1 Honorable Charlie G. Williams
State Superintendent of Education
South Carolina Department of Education
Rutledge Building
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested the advice of this office as to the application of a proviso in the Appropriations Act for the Department of Education. R241 § 28, 1983. This proviso states that amounts appropriated for county superintendents of education ‘. . . shall be equally divided among the county superintendents of education for . . .’ twelve named counties. According to the information provided in your letter of August 16, 1983, legislation has abolished the office of county superintendent in several counties and devolved those duties upon other public officials and bodies.

When it passed the proviso, the legislature must be deemed to have been cognizant of existing statutes abolishing the offices of county superintendent in question. Sutherland Statutory Construction, Vol. 2A § 45.12 (4th Ed.). That the legislature would refer to these offices in the affected counties without intending that the counties receive the funds is a futile act which cannot be presumed here. Id. That the money is intended to be expended for these counties is further supported by the use of the word ‘shall’ in the directive to divide the money which indicates a mandatory construction. Id. § 57.03.

Important here is that rule that ‘[p]rior statutes relating to the same subject matter are to be compared with the new provision; and if possible by reasonable construction, both are to be so construed that effect is given to every provision in all of them.’ Sutherland Statutory Construction, Vol. 2A § 51.02 (4th Ed.). The key to the statutes in question seems to be that although the position of superintendent has been abolished in four counties, the duties have devolved on other officials or agencies. To give effect to the proviso as well as the laws abolishing these offices, a reasonable interpretation of the 1983 directive is that the money should be distributed to these successors. Cf. Rigdill v. Clarendon Co., 188 SC 460, 199 SE 683 (1938).

The Anderson County delegation apparently sought legislative action to address expressly this issue for its county. For that county, the legislature has expressly provided that the successors receive and use these state funds. Act 510, Acts and Joint Resolutions of South Carolina (1982). Although the above authority supports distribution to the successors, legislative clarification for the other counties in question may be desirable.

Distribution may pose some problems of application in Orangeburg County where the boards of trustees of the several school districts and the county board of education have each been delegated some of the superintendent's duties. Act 291 of 1979. We suggest that you try to work with those affected local bodies to try to reach agreements as to the distribution of funds.

*2 Finally, you have advised us that vacancies exist in the superintendent position in two counties. We suggest that you request satisfactory evidence that the vacancy has been filled before distributing the money. The money is appropriated for county superintendents. If no one is serving in and performing the functions of that office or its successor, then the purpose of the legislation may not be served by the expenditures of this money. See 63 Am.Jur.2d PUBLIC OFFICERS AND EMPLOYEES § 363.

If we may be of further assistance, please contact us.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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