

1981 WL 158232 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 10, 1981

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

Dear Dr. Williams:

You have requested the opinion of this office as to whether an individual serving as a county or district superintendent of education in 1973 is permanently exempt from certification requirements. Your question refers to [§ 59-13-20 of the Code of Laws of South Carolina \(1976\)](#), which provides as follows:

The person appointed as administrative officer to the board of education and the person appointed superintendent of any school district shall meet the qualifications required and possess the superintendent certificate issued by the State Board of Education.

The board of education of any county and the board of trustees of any school district, however, may impose any additional qualifications which it may deem proper. This section shall not affect any person presently serving as county or district superintendent of education. [Emphasis added].

This statute was effective on June 15, 1973 (Act 338, Acts and Joint Resolutions of South Carolina (1973)), and the underlined exemption would apply to all persons serving as county or district superintendent at that time. You have asked whether any such person would still be entitled to exemption if he or she left office and later sought another position as district or county superintendent. If so, you would like to know whether these persons are entitled to superintendents' certificates.

This statute's special treatment of persons already serving as superintendents is to what is commonly referred to as a 'grandfather clause', and a split of authority exists as to whether such clauses should be liberally or strictly construed. See [Sutherland Statutory Construction](#), Vol. 2A, § 47.12; [4 A.L.R.2d 667, 670](#); 73 Am. Jur. 2d [Statutes](#) § 313. In addition, generalizations about the extent of the privileges conferred by grandfather clauses are not possible because of their dependency on the wording of the particular clauses. [4 A.L.R.2d 667, 673](#). Thus, little guidance is provided for the construction of [§ 59-13-20](#) other than its own terms.

[Section 59-13-20](#) appears to provide a permanent exemption for covered county or district superintendents. Its extending the exclusion to 'any person' rather than to 'any superintendent' indicates that the exemption attaches to a person in his individual capacity rather than to him in his official capacity. Thus, it is not contingent upon his continuing to serve as superintendent and it follows him when he leaves office. It should apply to moves from county to district superintendent and vice-versa as well as from county to county and district to district.

The exemption extends to all other portions of [§ 59-13-20](#). The 'section' to which it refers is § 1 of Act 338 of 1973 which contains all of [§ 59-13-20](#). Thus, the exemption means that [§ 59-13-20](#) shall not affect persons then serving as superintendents. Accordingly, they do not have to meet qualifications set by the state, county, or district boards of education or trustees under this law and they do not have to possess the superintendent's certificate issued by the State Board of Education.

*2 Unless they voluntarily meet the qualifications for the superintendent's certificate required of those not benefiting from the 1973 exclusions, exempt superintendents would not be entitled to a § 59-13-20 certificate; however, the State Board of Education is not precluded, by § 59-13-20, from issuing a certificate or other document which recognizes a person's status as having served as a superintendent in 1973.

The opinion of this office is that § 59-13-20 provides a permanent exemption from its requirements for persons who were serving as a county or district superintendent when the law was passed in 1973. Those persons are not entitled to certificates under that section unless they voluntarily meet the requirements for one, but the State Board may choose to issue them another certificate or other document which recognizes their special status.

If we may be of further assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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