

1976 WL 30806 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 28, 1976

*1 Mr. Preston L. Musgrove
Supervisor
Office of Teacher Education and Certification
State Department of Education
1429 Senate Street, Rutledge Building
Columbia, SC 29201

Dear Mr. Musgrove:

The State Board of Education invoked their power of teacher certification and revocation of same under Section 21-45 to annual a teaching certificate granted to Sadie Wright of Orangeburg.

The problem that arises is that the due process rights of Ms. Wright have most certainly been violated. In a recent Fourth Circuit case, with an almost identical factual situation, the due process rights of the teacher were upheld. In [Huntley v. North Carolina State Board of Education](#), 493 F2d 1016 (Fourth Circuit, 1974), a teacher had been certified and had a contract for a teaching position. This created 'a property interest in her contractual teaching position.' [Huntley vs. Board of Education](#), supra. [CA Board of Regent v. Roth](#) 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). This situation is identical to that of Ms. Wrights. In fact, the Huntley teacher had actually began to teach, but the contractual relationship was sufficient to create a property interest.

In [Huntley](#), the teacher's test and certificate revocation came because it was alleged that she did not take the test herself and presumably, her certified score was higher than her previous scores. The reason for Ms. Wright's revocation is not even this clear, although the insinuation is the same.

The [Huntley](#) court held an ex parte invalidation of the certificate to be a denial of due process. The court reinstated the certificate but did not prejudice the Board's right to hold a proceeding according the teacher due process for determination of revoking or invalidating the certificate. Such procedure would be in accord with that afforded teachers accused of cheating on the N.T.E. in [Shirer v. Anderson](#), 88 F.Supp. 858 (EDSC 1950) and [Pettiford v. S.C. State Board of Education](#), 218 S.C. 322, 62 S.E.2d 780 (1950).

Thus the best procedure to follow to avoid court action and a probable adverse ruling would be to reinstate the certificate of Ms. Wright and provide notice of and conduct a hearing for revocation with Ms. Wright having the right to be heard and have counsel. Also its burden of proof, under [Huntley](#), would rest with the State Board of Education.

Please contact me if you have any questions concerning this matter.

Sincerely,

Hardwick Stuart, Jr.
Assistant Attorney General

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