

1972 WL 25372 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 30, 1972

***1 Re: #263—Schools—Funds, etc.**

Mr. Ralph Durham
Dep. Supt.
Division of Finance and Operations
S. C. State Department of Education
Rutledge Building
Columbia, South Carolina

Dear Mr. Durham:

In answer to your request for an opinion from this office relating to the legal effects of the concurrent resolution recently passed requesting the State Board of Education to pay certain school building funds, I am of the opinion that this concurrent resolution does not and cannot alter the authority and responsibility of the Board under Article 2, Chapter 10, Title 21, Code of Laws of South Carolina, as amended.

Having not been read the three times in both Houses required of Acts having the authority of law, this resolution does not have the effect of law. Article 3, Section 18, South Carolina Constitution; [State v. Columbia Water Power Company, 74 SE 26, 90 S.C. 568 \(1912\)](#). Furthermore, the fact that this resolution is separate in both time and physical proximity from the original legislation raises a question as to the weight to be given to the declaration of purpose contained in the concurrent resolution. Any thought, however, of giving retroactive effect to this statement of legislative intent, should, in my mind, be dispelled by the clear and unambiguous legislative statement in Section 21-275, Code of Laws of South Carolina, as amended, providing for the precise process for such funds:

The sums credited by the Board to each school district, under the provisions of § 21-274 and 21-1000, shall remain available to school districts until requisitioned by them for purposes approved by the Board. Such funds shall be available for the following purposes only and in the following order of priority: (a) To be applied on the financing of capital improvements approved by the Board; (b) to pay principal and interest of school district indebtedness represented by bonds or notes issued before July 1, 1951 for any capital improvement or bonds or notes issued on or after July 1, 1951 for capital improvements approved by the Board. (1952 Code § 21-275; 1951 (47) 546; 1967 (55) 719.)

To give effect to the declaration of purpose in the concurrent resolution in question would amend Section 21-275, contrary to the holding in the Columbia Water Power Company case cited above and to the following: general principle: 'Resort may be had to recitals of legislative intent for the purpose of construing an ambiguous statute, but where there is no ambiguity, the meaning will be affected by such recitals.' 82 C.J.S., Statutes Section 323, page 612-613.

In conclusion, therefore, I recommend that the State Board respectfully request the Legislature to express the true legislative intent relative to such building funds in a form which will have the effect of law and thus amend the restrictive provisions of Section 21-275 in conjunction with Article 10, Section 3, Constitution of South Carolina, which requires revenues to be expended for the purpose for which they are levied.

***2** Contact me if I can be of any further assistance.

Sincerely yours,

Hardwick Stuart, Jr.
Assistant Attorney General

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