

1972 WL 25358 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 19, 1972

***1 Re: No. 37—Constitutionality of Acts No. 256—Schools—General**

Mr. Richard M. Unger
Research Assistant on Legal Affairs
State Department of Education
Rutledge Building
Columbia, South Carolina

Dear Dick:

At your request for Dr. Garrett, I am answering your letter asking for an opinion on the constitutionality of the proposed bill to give to the constituent school boards in Charleston the sole authority to make all rules and regulations for attendance and discipline in the respective constituent districts. In [McElveen v. Stokes](#), 240 S.C. 1, 124 S.E. 2d 592 at 596, the South Carolina Supreme Court stated:

It is clear from a study of these cases and the constitutional provisions that the scope of the legislative power is much broader in dealing with school matters than is the scope in dealing with various other subjects. However, not even in school cases is the power of the General Assembly always broad enough to insure that an act pertaining to school matters is not in contravention of Article III, Section 34, Subsection IX.

Since Section 21-230, Code of Laws of South Carolina as amended and Sections 21-105 and 21-230.2 are general laws governing rule-making authority, the proposed bill would appear to be prohibited as special legislation under the prohibition of Article 3, Section 34, Subsection IX, of the Constitution of South Carolina, unless the bill were so drafted and enacted as to become a special provision in a general law as allowed in Subsection X of Article 3.

Contact me if I can be of any further assistance.

Sincerely,

Hardwick Stuart, Jr.
Assistant Attorney General

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