

# The State of South Carolina



## Office of the Attorney General

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December 16, 1991

The Honorable Caldwell T. "Red" Hinson  
Senator, District No. 16  
115 Chesterfield Avenue  
Lancaster, South Carolina 29720

The Honorable William D. Boan  
Member, House of Representatives  
Post Office Box 248  
Heath Springs, South Carolina 29058

The Honorable James H. Hodges  
Member, House of Representatives  
Post Office Drawer 460  
Lancaster, South Carolina 29721

Gentlemen:

You have requested the opinion of this Office as to the authority of the General Assembly to enact legislation to allow the Lancaster County Superintendent of Education to be elected. Act No. 274, 1987 S.C. Acts 2354 called for a referendum to be held that year concerning two questions affecting the Lancaster County School District including whether "...the chief administrative officer of the Lancaster County District Board of Trustees, namely the Lancaster County Superintendent of Education, [shall] be (a) elected by the voters of the school district, or (b) hired by the Lancaster County District Board of Trustees..." Subsequently, Act No. 777 § 4, 1988 S.C. Acts 6423, abolished the office of County Superintendent of Education for Lancaster County and devoted the powers and duties previously exercised by the Superintendent upon the Lancaster County School District Board of Trustees.

In S.C. Const. Art. XI, Section 3, the "...General Assembly is charged with the duty to provide for a system of public education..." Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36, 38 (1975). Therefore, the legislature clearly has the authority to enact laws concerning education as it has done in the past with the office of the Lancaster County Superintendent of Education. Accordingly, the General Assembly, if it so chooses, may amend

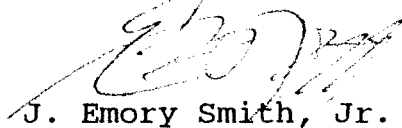
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those parts of Act 777 of 1988 which abolished the position of the Lancaster County Superintendent of Education and provided for the election of a County Superintendent of Education. Any changes in this legislation creating an elected office should be precleared by United States Justice Department under Federal Voting Rights Laws.

Of course, I make no recommendation as to whether any legislation should be enacted or what form it should take. The conclusion of this opinion is limited to determining that the General Assembly has the authority to enact legislation concerning the manner of choosing the Lancaster County Superintendent of Education. I have not reviewed any proposed draft legislation concerning this matter and do not know whether any has been prepared.

If you have any questions, please let me know.

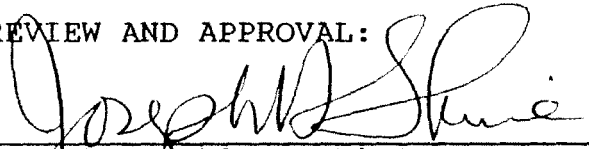
Yours very truly,




J. Emory Smith, Jr.  
Assistant Attorney General

JES, JR:jca

REVIEW AND APPROVAL:

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Joseph D. Shine, Chief Deputy  
Attorney General  

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Robert D. Cook, Executive  
Assistant, Opinions