

The State of South Carolina

4707 Library



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3636
FACSIMILE: 803-253-6283

December 20, 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 additional advice related to the opinion of this Office of December 16, 1991. Specifically, you would like to know whether, because a petition of 15% of the electors has been presented, the General Assembly must enact legislation calling for a referendum concerning the method of selection of the Lancaster County Superintendent of Education. I know of no authority that makes mandatory the Legislature's passing legislation calling for such a referendum. See Ops. Atty. Gen. February 13, 1991. In particular, the Home Rule Act, S.C. Code Ann. § 4-9-10, et seq. (1986) contains no provisions requiring the General Assembly to call for a referendum on such a subject. See sections 4-9-30(5) concerning the creation of special tax districts and 4-9-1210, et

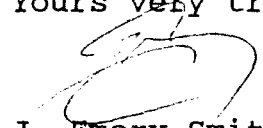
The Honorable Caldwell T. "Red" Hinson
The Honorable William D. Boan
The Honorable James H. Hodges
December 20, 1991
Page 2

seq. concerning county ordinances. Moreover, the Home Rule Act applies primarily to county matters and not to education. ¹

Although the General Assembly is not compelled to enact legislation calling for a referendum as to the county superintendent of education, it is not prohibited from doing so. As noted in the December 16th opinion under S.C. Const. Art. IX, § 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, whether to enact legislation calling for a referendum as to this matter is discretionary with the General Assembly.

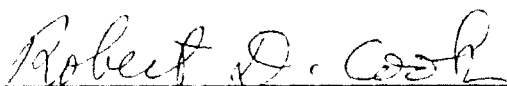
In conclusion whether to enact legislation calling for a referendum as to the method of choosing the Lancaster County Superintendent of Education is not mandated under any statutory authority even though a petition has been presented; however, the Legislature has the discretion, if it chooses to do so, to enact legislation calling for such a referendum. I hope that this information will be of assistance to you.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/jps

REVIEWED AND APPROVED BY:


ROBERT D. COOK
Executive Assistant for Opinions

¹ Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36,37 (1975) stated that "...public education is not the duty of the counties, but of the General Assembly." In addition, section 4-9-70 of the Home Rule Act states that this law "...shall not be construed to devolve any additional powers upon county councils with regard to public school education..." except as provided therein as to school tax millage.