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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

April 20, 1992

The Honorable Denny W. Neilson
Member, House of Representatives
519-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Neilson:

You have requested the opinion of this Office as to whether the number of members of the Darlington County Board of Education (County Board) may be reduced from twelve (12) members to eight (8) when the effect of doing so might cut short the terms and eliminate the offices of some members who are in the middle of their terms. See Act 748, 1978 S.C. Acts 2413. The legislature can end or shorten the term of any office that it creates such as positions on the Darlington County Board. Ops. Atty. Gen. (December 22, 1988); see also Ops. Atty. Gen. (July 16, 1985).

Because the current membership of the County Board is now fixed by the above referenced legislation, any change in the composition of the body would have to come through action by the General Assembly. Without reviewing any such legislation, I could not advise you of whether any other problems might result from it; however, I do note that the Supreme Court has recently held that legislation regarding education is not exempt from the requirements of Article III, Section 34 (IX) prohibiting special legislation where a general law can be made applicable. Horry County v. Horry County Higher Education Commission, ____ S.C. ____, 412 S.E.2d 421 (1991). Without seeing legislation on this subject and without knowing what factors might be given to show that special legislation was needed on this subject, I could not conclude whether local legislation concerning this matter would be upheld by the Court nor could I conclude now whether the law might be upheld as a special provision in a general law. But see Moseley v. Welch, 209 S.C.19,

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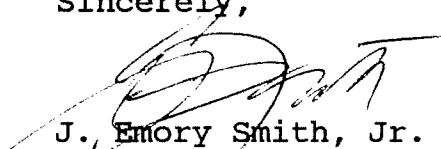
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39 S.E.2d 133 (1946)¹ and State v. Meares, 148 S.C. 118, 145 S.E. 695 (1928).

In conclusion, no constitutional violation would appear to result from the fact alone of reducing the size of the Darlington County School Board from twelve (12) to eight (8) members, but any legislation on that subject would need to be reviewed by the Justice Department under the Voting Rights Act. Whether any other problems could result from such legislation cannot be determined without reviewing the legislation. See also Horry County, supra.

If you need additional information, please let me know.

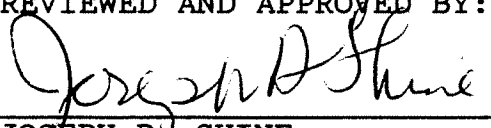
Sincerely,

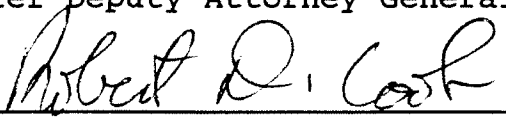

J. Emory Smith, Jr.
Assistant Attorney General

JESjr/r1

cc: The Honorable Denny W. Neilson
107 Florida Drive
Darlington, South Carolina 29532

REVIEWED AND APPROVED BY:


JOSEPH D. SHINE
Chief Deputy Attorney General


ROBERT D. COOK
Executive Assistant for Opinions

¹ In Moseley the court made the following statement:
"...[S]pecial legislation relating mainly to the fiscal school affairs of each of the forty-six counties of the State... 'is at least indicative of a consistent legislative opinion that conditions in the various counties are such as to preclude uniformity of treatment in relation to the administration of school affairs.' This conclusion of the General Assembly is entitled to much respect and in doubtful cases should be followed."