

The State of South Carolina



Office of the Attorney General

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April 9, 1987

The Honorable Robert B. Brown
Member, South Carolina House
of Representatives
414D Blatt Building
Columbia, South Carolina 29211

Dear Representative Brown:

You have requested the advice of this Office as to the authority of the Marion County Board of Education to make changes in school district boundaries. Previous opinions of this Office have discussed the general provisions of law for changing school district boundaries or consolidating school districts in §§59-17-20, 59-17-40 and 59-17-50 of the Code of Laws of South Carolina, 1976. Ops. Atty. Gen., (November 30, 1981; June 8, 1981).

The provisions of these statutes found to be valid in those opinions should apply to Marion County except that Act 607 of 1986 appears to modify the discretionary authority of the County Board of Education to consolidate school districts pursuant to §59-17-50. Lewis v. Gaddy, 254 S.C.66, 173 S.E.2d 376 (1970); Ops. Atty. Gen., (July 12, 1985); Sutherland Statutory Construction, Vol. 2A, §§51.02 and 51.05. Act 607, §6 provides that the consolidation of any existing school districts or the abolition of any district board of trustees by the County Board of Education must first have the approval of qualified electors in the school districts in a referendum called in the same manner as provided in Title 4, Chapter 9 of the 1976 Code. Therefore, this procedure would have to be followed for discretionary consolidation under §59-17-50. Act 607 indicates no intent to limit the specific provisions for consolidation by the county boards of education pursuant to petition under §§59-17-20 and 59-17-40 of the Code, and effect can be given to all of these provisions of law. See Lewis v. Gaddy, supra, Ops. Atty. Gen., (July 12, 1985), supra; Sutherland, supra.

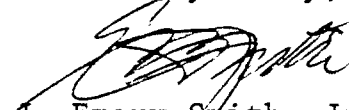
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Under the above authority, valid means of alteration of district lines or consolidation of districts in Marion County appear to consist of the following methods:


- (1) Alteration of district lines or consolidation by the County Board of Education upon a written petition satisfying the requirements of §§59-17-20(2) (b) and (c) and 59-17-40. Consolidation under this method may be utilized if all of the school districts may be combined into one district.
- (2) Alteration of district lines or consolidations may be accomplished by act of the General Assembly relating to one or more counties provided that, in alterations, the intention is not to create a new school district. Section 59-17-20(1) and 59-17-40.
- (3) Consolidation of the school districts may be accomplished by the County Board of Education under §59-17-50 provided that a petition is presented meeting the requirements of Act 607, §6.
- (4) Alteration of district lines or consolidation of districts by the County Board of Education upon the approval of the legislative delegation under §59-17-20(2)(a) may be of questionable constitutionality. Ops. Atty. Gen., (June 8, 1981).


If you have any questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/srcj
Enclosure
REVIEWED AND APPROVED:


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