

1982 WL 189230 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 31, 1982

\*1 The Honorable James N. Ashe, Sr.  
Member  
House of Representatives  
320-A Blatt Building  
Columbia, South Carolina 29211

Dear Representative Ashe:

You have requested an opinion from this Office on whether the provisions of Section 21-4172 of the Code of Laws of 1962 have been repealed by Section 1 of Act No. 301, Acts and Joint Resolutions, 1971. Section 21-4172 provides that the recommendations of members of the Union County Board of Trustees concerning the schools located in the voting precinct or precincts they represent shall be controlling unless rejected by the unanimous vote of the remaining members of the Board.

Section 1 of Act No. 301 provides that:

Section 21-4172 of the 1962 Code is amended to read as follows: 'Section 21-4172. No high school in Union County shall be closed without the unanimous approval of the board of trustees.'

The title to that Act provides in part as follows:

AN ACT TO AMEND SECTION 21-4172 . . . RELATING TO RECOMMENDATIONS OF SCHOOL TRUSTEES OF UNION COUNTY, SO AS TO FURTHER PROVIDE THEREFOR . . . [Emphasis Added]

It is a general rule of statutory construction that when a legislature sets out to amend a provision of law and thereby to repeal a previously existing provision, that intent is most commonly indicated by a statement that the existing provision 'is amended to read as follows.' That phrase is used in the introduction to Section 1 of Act 301. However, this general rule is inapplicable where there is an indication that the legislature intended otherwise. Sutherland, 2A Statutory Construction, Section 23.12. The title to Act 301, which may be used as aid in the construction thereof, indicates that the General Assembly did not intend to repeal Section 21-4172 but instead intended only to amend it by adding another provision. This indication of legislative intent should control the construction of Section 1 of Act 301 on the issue of whether it repealed Section 21-4172.

Although the matter is not free from doubt, it is the opinion of this Office that Section 1 of Act 301 of 1971 amended but did not repeal the provisions of Section 21-4172 of the 1962 Code.

If our opinion was that Section 21-4172 had not been repealed, you also asked the opinion of this Office as to the effect of that Section on the validity of a specific action taken by the Board of Education or the Board of Trustees. This question should be referred to the local attorneys for those boards.

Sincerely,

James M. Holly  
Assistant Attorney General

ATTACHMENT

STATE OF SOUTH CAROLINA COUNTY OF UNION

IN THE COURT OF COMMON PLEAS

Michael H. Roberts, James Robert Bentley, and Charlene H. Nance, Plaintiffs,

-VS-

The Union County Board of School Trustees, and Dewey Adams, Harreitt Berry, J. N. Berry, Thomas E. Blackwood, Robert J. Crocker, James Good, Jimmy Hodge, Richard Jeffcoat, Randy Jenkins, Keith Parks, Rebecca Sanders, Debra Toney and Carlisle Hart, individually and as Members of the Union County Board of School Trustees, Defendants.

\*2 CIVIL ACTION NO. 82-CP-44-50

ORDER

This is a suit brought by the Plaintiffs, as representatives of a class of citizens making up the Jonesville and Lockhart School Attendance Areas in Union County, South Carolina, against the Union County Board of School Trustees and its individual members. The suit was commenced with the filing of an Order and Rule to Show Cause, a Summons and a Complaint in the Office of the Clerk of Court of Union County, South Carolina on April 9, 1982. The Plaintiffs, in the Complaint, allege that actions taken by the Defendants at the March 8, 1982 meeting to reorganize the county school system governmental frame work violated Section 21-4172 of the 1962 Code of Laws of South Carolina, the Administrative Procedures Act for the State of South Carolina ([Section 1-23-310 et. seq. Code of Laws of South Carolina](#), 1976, as amended), the Freedom of Information Act for the State of South Carolina ([Section 30-4-10 et. seq. Code of Laws of South Carolina](#), 1975, as amended) and Section 21-4168 of the Code of Laws of South Carolina, 1962. The Plaintiff sought the following relief from this Court:

1. A declaratory judgment outlining the applicability of Section 21-4172 of the Code of Laws of South Carolina, local laws for Union County as contained in the 1962 Code and declaring whether or not the Defendants should be required to rescind their action at the March 8, 1982 meeting and consider the recommendations of the area trustees.
2. Injunctive relief requiring the Defendants to adhere to the procedures concerning the recommendations of the area trustees as outlined in Section 21-4172 of the Code of Laws of South Carolina, local laws for Union County, as contained in the 1962 Code, enjoining the Defendants from making any expenditure: of funds to adopt any reorganization plan voted on at the March 8, 1982 meeting and allowing the area trustees to have their area superintendent installed in office and serve until further order of this Court.
3. A declaratory judgment relative to their rights under the Freedom of Information Act.
4. An Order declaring that Defendants acted in violation of Section 21-4168 of the Code of Laws of South Carolina, 1962.

A hearing was held in this matter on May 14, 1982 at the Union County Courthouse. Appearing on behalf of the Plaintiffs was Attorney Albert V. Smith. Appearing on behalf of the Defendants was Attorney William E. Whitney, Jr.

After carefully considering the arguments posed by counsel for the parties at the hearing of May 14, 1982 and in the briefs submitted subsequent to that hearing, I find that the actions of the Defendants at the March 8, 1982 meeting did not violate the provisions of Section 21-4172 of the Code of Laws of the State of South Carolina, 1962, as amended. Section 21-4172 was amended by Act No. 301 of the Acts and Joint Resolutions of the General Assembly for the year 1971 and it is the finding of this

Court that Section 21-4172 now consists solely of the language contained in Act No. 301. [Independence Insurance Company vs. Independent Life and Accident Insurance Company](#), 218 S.C. 22, 61 S.E. 2d. 399 (1950) states:

\*3 'An amended statute must be construed as if the original statute were repealed and a new and independent act in amended form adopted, unless contrary intent is clearly indicated.'

The weight of the evidence clearly substantiates that it was the intent of the General Assembly that the language of Act No. 301 be the complete statement of Section 21-4172. Act No. 301 states that Section 21-4172 is '... amended to read as follows ...'. There is no indication from the language of the amendment that it should serve as a mere addition to the original Section 21-4172. A survey of legislative acts reveals that if the General Assembly intends an amendment to be a mere addition to an existing statute, as opposed to a complete new statement of the original statute, language to that effect is utilized in the amendment.

Further evidence of legislative intent is found in the fact that the title of Section 21-4172 has changed from 'Effect of Recommendations by Trustees' to 'No High School shall be closed without unanimous approval of trustees' [Lindsay v. Southern Farm Bureau Casualty Insurance Company](#), 258 S.C. 272, 188 S.E. 374 (1972) and other cases holds that 'It is proper to consider the title or caption of an act in aid of construction to show the intent of the Legislature.' Such a change in the title of this section indicates an intention to change the purpose and content of Section 21-4172.

Finally, the reorganization of the Union County School System governmental framework by Act No. 124, Section 2 of the 1969 Acts and Joint Resolutions rendered the language of Section 21-4172 of the 1962 Code ineffective. When Section 21-4172 was enacted in 1962, the school government consisted of two separate bodies: The County Board of School Trustees and The County Board of Education. Thus, the language of Section 21-4172 applied to the County Board of School Trustees then existing. Act No. 124, Section 2 merged the County Board of School Trustees with the County Board of Education to form a new governing body: The Union County Board of School Trustees. The 1962 Section 21-4172 clearly was not enacted to regulate the activities of a body that was not created until 1969. Therefore, it is the finding of this Court that Act No. 301 is a new, complete statement of Section 21-4172 enacted in order to apply to the new Union County Board of School Trustees in high school closing matters alone.

The Plaintiffs also allege that the Defendants should be enjoined from implementing the reorganization plan voted on at the March 8, 1982 meeting because the Defendants' actions violate the provisions of the Administrative Procedures Act ([Section 1-23-310 et. seq. Code of Laws of South Carolina](#), 1976, as amended). Such an allegation is without merit. The Administrative Procedures Act applies only to State Regulatory Agencies as defined in [Section 1-23-310\(1\) of the Code](#): Its application in this instance is clearly irrelevant.

The Plaintiffs further allege that the actions of the Defendants at the March 8, 1982 meeting violated the Freedom of Information Act and thus should be null and void. [Section 30-4-100 of the Code of Laws of South Carolina](#), 1976, as amended states that 'The court may order equitable relief as it deems appropriate.' This Court will not declare that Defendants actions at the March 8, 1982 meeting either did or did not violate the Freedom of Information Act. However, even if the actions in question violated the Act, the equities of this situation demand that a Freedom of Information Act violation does not make an otherwise valid action null and void.

\*4 The Plaintiffs finally allege that the Defendants' violate Section 21-4168, Code of Laws of South Carolina, 1962, as amended, by reorganizing the governmental framework so that the Finance Officer reports directly to the Chief Administrative Officer of the Board instead of reporting directly to the Board. This contention is likewise without merit. Under the proposed reorganized governmental framework, the Finance Officer is still ultimately answerable to the Defendants. Section 21-4168, as amended, is not violated by the proposed reorganizational plan.

Therefore, the Plaintiffs request for declaratory and injunctive relief is hereby denied.

AND IT IS SO ORDERED.

JONATHAN Z. McKOWN, PRESIDING JUDGE

SIXTEENTH JUDICIAL CIRCUIT

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