

1982 WL 189345 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 23, 1982

***1 RE: Validity of Teaching Contract Issued by District Superintendent Without Knowledge or Approval of the Board of Trustees**

Mr. Bernard R. Cummings
Member—Board of Trustees
Bamberg School District No. 2
Vorhees College
Division of Social Sciences
Denmark, South Carolina 29042

Dear Mr. Cummings:

Your letter of June 14, 1982 regarding the above referenced matter has been received by our office. In your letter, you relate the following facts:

1. A teacher was notified by the principal of the school that he would not be recommended for a subsequent contract.
2. The teacher resigned rather than face dismissal.
3. The teacher's letter of resignation was presented to and accepted by the Bamberg District No. 2 Board of Trustees (Board).
4. The Bamberg District No. 2 Superintendent (Superintendent) subsequently issued a contract to the same teacher to teach in another school within the district.
5. The Board had no knowledge of the contract and did not authorize or approve issuance of the contract.

You have requested an opinion from this office as to the validity of the contract issued by the Superintendent without the knowledge and approval of the Board and whether, under these circumstances, the Board is obligated to honor the contract.

[Section 59-19-90, South Carolina Code](#) of Laws, 1976, as amended, the statutory provision which sets forth the general powers and duties of school trustees, states in pertinent part:

The Board of Trustees shall also: . . .

(2) Employ and discharge teachers. Employ teachers from those having certificates from the State Board of Education, fix their salaries and discharge them when good and sufficient reasons for so doing present themselves, subject to the supervision of the county board of education; . . .

[Section 59-19-80, South Carolina Code](#) of Laws, 1976, as amended, provides further that no teacher shall be employed except upon approval of the board in a duly called meeting. The above cited statutory provisions and the case law clearly demonstrate that under the law of South Carolina the district boards of trustees have the full responsibility of operating the public school systems which includes, within specified limits, the right to hire, discharge for good/sufficient reason, and refuse to rehire for a succeeding school year. [Rackley v. School District No. 5, Orangeburg County, S. C., 258 F. Supp. 676 \(1966\)](#); [Pressley v.](#)

Nunnery, County Superintendent of Education, 169 S.C. 509, 169 S.E. 413. The law clearly proscribes anyone other than the Board from employing teachers.

If the facts as presented in your letter and recounted above are accurate and the Board had no knowledge of and gave no approval to the contract in question, the validity of the contract is certainly in question. The Superintendent was without authority to issue the contract. Because the Superintendent had no legal authority for his action, the law recognizes no duty on his part to perform the terms of the contract and, therefore, the contract is void. It is the opinion of this office that under these circumstances the Board has no legal obligation to honor the contract and should declare the same void.

*2 As the Board is now aware of the Superintendent's action, it is incumbent upon the Board to notify the teacher as soon as possible of your position in this matter. Failure to notify the teacher of your position could result in an allegation by the teacher that the Board, through inaction, has acquiesced in the Superintendent's issuance of the contract.

I hope this information will be beneficial to you. If you have any questions, please contact me.

Sincerely,

B. J. Willoughby
Assistant Attorney General

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