

1980 WL 121194 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 24, 1980

\*1 Mr. Charles P. Edwards  
Assistant County Attorney  
Spartanburg County  
Post Office Box 5306  
Spartanburg, South Carolina 29304

Dear Charles:

You have requested an opinion as to whether members of the Spartanburg County Higher Education Commission should continue to be appointed by the County Legislative delegation under Act No. 36, Acts and Joint Resolutions of South Carolina, 1967, which sets up the Commission. If Home Rule legislation is controlling here ([see § 4-9-10, et seq. of the Code of Laws of South Carolina \(1976\)](#)), the membership of the Commission would now have to be appointed by the Spartanburg County Council. [See](#) section 4-9-170.

The purposes behind the Home Rule Laws are not consistent with their application here. Act No. 283 § 1, 1975 states that the purpose of the Home Rule Act is to comply with the mandates of Article VIII of the Constitution of South Carolina (1895) which include prescribing the duties and powers of counties. Education is the duty of the legislature rather than the counties. [See Article XI § 3 of the Constitution; Moya v. Caughman, 265 S.C. 140, 217 S.E.2d 36 \(1975\)](#); Opinion of this Office dated January 4, 1980, written by Emory Smoth. Thus, when, as here, the legislature has passed legislation concerning education, the counties should derive no power from the Home Rule Laws to act in those matters unless it is expressly given. [See](#) Opinion, supra. Under these laws, section 4-9-170 states that, beginning January 1, 1980, county councils ' . . . shall provide by ordinance for the appointment of all county boards, committees, and commissions whose appointment is not provided for by the general law or the constitution.' This authority does not appear to be sufficient to give Spartanburg County Council the power to provide for the appointment of the members of the Spartanburg County Higher Education Commission. That duty should continue to rest with the legislature under [Article XI § 3](#).

If I can be of further assistance, please do not hesitate to contact me.

Yours very truly,

J. Emory Smith, Jr.  
State Attorney

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