

1980 WL 120795 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 25, 1980

*1 Mr. R. Ferrell Cothran, Jr.
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111 South Brooks Street
Manning, South Carolina 29102

Dear Mr. Cothran:

I am in receipt of your recent letter. You have inquired as to the status of the Office of the Superintendent of Education in Clarendon County.

As you are aware, in 1973 an Act bearing ratification number 530 was submitted to the Justice Department. On November 13, 1973, this submission was disapproved. On December 7, 1979, the Justice Department wrote this Office stating that their files did not indicate that the abolishment of the Office of the Superintendent of Education in Clarendon County had been submitted to the Justice Department. I wrote the Justice Department on December 18, 1979, and informed them that the Act had been submitted and disapproved. On January 29, 1980 at the request of the County Attorney, I submitted to the Justice Department an Ordinance enacted by Clarendon County that abolished the Office of the Superintendent of Education. On March 27, 1980, the ordinance was approved by the Justice Department.

There is obviously a conflict with the disapproval in 1973 and approval in 1980 by the Justice Department. However, a more serious problem that has only recently come to my attention is the question of whether or not the county government has the power to abolish the Office.

South Carolina Code of Laws, 1976, Section 4-9-80 states in part that the powers conferred upon the counties by the Home Rule Act

. . . shall not be construed to devolve any additional powers upon county councils with regard to . . . political subdivisions by whatever name designated . . . and such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts . . . except as they may be modified by act of the General Assembly . . .

See also section 4-9-170 which states that the power of the county governing body to appoint members to various county boards shall not extend to school districts.

It is general law that a statute cannot be repealed by an ordinance. 6 McQuillin on Municipal Corporations § 21.32, cf. § 21.28. And it is apparent from the above-cited statutes that the General Assembly has not conferred the power to abolish a school office to the counties through the Home Rule provisions.

Therefore, notwithstanding the fact that the ordinance abolishing the Office has been approved by the Justice Department, the Office would still be in existence as it was beyond the power of the county government to abolish the position.

Very truly yours,

Treva G. Ashworth
Senior Assistant Attorney General

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