

1980 WL 120897 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 25, 1980

*1 Mr. James A. Bell
Attorney at Law, P.A.
Post Office Box 905
St. George, South Carolina 29477

Dear Mr. Bell:

As attorney for Dorchester County, you have requested the opinion of this Office as to the effect of consolidation of Dorchester County School Districts on employment contracts. In the hypothetical situation you posed, one of three (3) districts would be divided between the other two districts so that the county would have only those two enlarged districts. You wish to know whether employment contracts in the dissolved district which have terms lasting beyond the date of consolidation would be valid after that date.

South Carolina case law makes clear that the assets and liabilities of the district to be dissolved would succeed to the two districts between which its territory is to be divided. [Smythe v. Stroman](#), 251 S.E. 277, 162 S.E.2d 168 (1968); [Walker v. Bennett](#), 125 S.C. 389, 118 S.E. 799 (1923). Although these cases were concerned with consolidation of several districts into one rather than the divisions and combinations here, nothing in their language indicates that their holdings would not be applicable to the Dorchester County proposal. [Walker](#) cited with approval the following rule which would include the present situation: 'In case of the abolition of the old district and the formation of new districts out of its territory, the new districts are deemed the successors of the old, and as such liable for all its debts and entitled to all of its property. [24 R.C.L. p. 567]' 118 S.E. at 781.

Although [Smythe](#) the [Walker](#) were concerned with bonded indebtedness, both refer generally to the assumption of liabilities. That these liabilities would include teachers' contracts and other employment contracts is made clear by much authority from other jurisdictions. See [School District v. Crabtree](#), 146 Okla. 197, 294 P. 171 (1930); [Wilson v. School District](#), 233 Mich. 581, 207 N.W. 810 (1926); [Barringer v. Powell](#), 230 N.Y. 37, 128 N.E. 910 (1920); 100 A.L.R.2d 1141; 121 A.L.R. 826. Thus, the two enlarged school districts in Dorchester County would assume any obligations imposed by the contracts entered by the dissolved school district; however, because this Office does not have copies of the contracts in question and because the proposed consolidation is hypothetical at this time, no opinion is expressed herein as to whether the language of the contracts and the circumstances of the consolidation would in fact obligate the succeeding districts.

The common law rules with respect to assumption of assets and liabilities have been codified to some degree in [§ 59-17-70 of the Code of Laws of South Carolina \(1976\)](#). Although it could be read strictly to apply only to situations in which several districts are combined into one, [Smythe](#) gives some indication that it may have been intended to apply to others such as that here which are covered by the common law; however, regardless of the applicability of [§ 59-17-70](#), the common law would require the enlarged districts to assume the liabilities of the one which was dissolved.

*2 No opinion is expressed herein as to how the enlarged districts would divide the assets and liabilities of the abolished district. Neither the common law nor [§ 59-17-70](#) speak directly to that matter.

If I may be of further assistance, please let me know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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