

1977 WL 37456 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 4, 1977

*1 Honorable Allen R. Carter
Chairman
Education, Health and Welfare Subcommittee
State Reorganization Commission
620 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Senator Carter:

You have requested opinions from this office on the following questions:

1. Is the State Superintendent of Education empowered to handle all aspects of educational activity in the State? In my opinion he is not. There are certain aspects of educational activity in the state that are outside the supervisory authority of the Superintendent.

The office of State Superintendent of Education was established by the Constitution. S. C. CONST. Art. 11, § 2. His sole constitutional function is to serve as the 'chief administrative officer of the public education system of the state.' *Id.* His general duties as to the public education system have been specified by the legislature. These duties apply only to 'public schools' and not to any other educational institutions. S. C. CODE § 59-3-30.

The term 'public school' has acquired, under legislation and practice, a well-settled meaning. It is '... never applied to higher [institutions] of learning, such as incorporated academies and colleges.' [In re Townsend](#), 88 N.E. 41, 43, 195 N.Y. 214. The Oklahoma Supreme Court has held that the supervision of 'instruction in public schools' by the board of education does not extend the board's authority to include supervision over the [state university](#). 95 P. 429, 432, 20 Okl. 809. *Accord*, [Litchman v. Shannon](#), 155 P. 783, 784, 90 Wash. 186. The North Carolina Court of Appeals has recently held that the term 'public schools,' while normally not including institutions beyond the high school level, may nonetheless be extended to include adult and technical education. [Parent-Teacher Ass'n v. Nash County Bd. of Ed.](#), 167 S.E.2d 538, 541, 4 N.C. App. 617 (1969). From these authorities I would conclude that the powers of the Superintendent of Education do not extend over all the educational activities in the state, but rather only over those activities associated with 'public schools.'

In addition, the Superintendent of Education is given the statutory duty of administering the policies and procedures adopted by the State Board of Education. S. C. CODE § 59-3-30(1), (6), and (7). The Board, which is given all its functions by the legislature, is empowered to adopt policies, rules, and regulations for the government of the 'free public schools'. S. C. CODE § 59-5-50(1). In addition to the public schools, the Board is given supervisory authority over the State Educational Television Commission, the State Advisory Committee for Technical Training, and the South Carolina Opportunity School. Therefore, the State Superintendent of Education is empowered, according to his duties set forth above, to oversee public elementary and secondary education and to administer rules and policies affecting the three state agencies named above.

*2 2. Is the Superintendent of Education empowered to oversee higher education programs? In my opinion he is not.

The governance of the various institutions of higher learning in South Carolina is conducted, in large part, by the respective Boards of Trustees or Board of Visitors of those institutions. Certain supervisory functions, however, have been given the State Commission On Higher Education. S. C. CODE § 59-103-10 ff. No such duties or powers have been given to the State

Superintendent of Education, either by the constitution or by statute. See, discussion under question 1, supra. Therefore, the Superintendent is not empowered to oversee higher education programs within the state.

3. If a new higher education co-ordinating council were proposed, would a constitutional amendment be required or would enabling legislation be sufficient? In my opinion, enabling legislation would be sufficient.

State constitutions are not, of course, grants of power to the General Assembly but are restrictions or what would otherwise be plenary power. [Knight v. Salisbury](#), 262 S.C. 568, 570, 206 S.E.2d 875, 876-77 (1974). There is no provision in the constitution which restricts the means by which the legislature may regulate higher education. Therefore, the General Assembly may exercise its plenary powers in this area and may create by statute a new higher education co-ordinating council.

With kind regards,

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Deputy Attorney General

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