

1979 WL 43513 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 9, 1979

*1 Honorable Frank H. McGill
Senator
District No. 11
Post Office Box 759
Kingstree, SC 29556

Dear Senator McGill:

You have requested an opinion from this Office as to whether or not the method of appointing the members of the Williamsburg Technical, Vocational and Adult Education Center Commission will be able to be altered by the Williamsburg County Council after January 1, 1980, pursuant to [§ 4-9-170, CODE OF LAWS OF SOUTH CAROLINA, 1976](#), as amended, in view of legislation (S-591) enacted during the 1979 session of the General Assembly which designates the Technical College as a 'public school' for the purpose of the annual tax levy for school purposes in Williamsburg County. In my opinion, as a result of this legislation, the Council may not be able to alter the method of appointing the Commission members as hereinafter discussed.

[Section 4-9-170 of the 1976 Code](#) provides in part as follows:

. . . beginning January 1, 1980, the council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law. . . .

Another provision of the 'home rule' legislation which must be construed together with [Section 4-9-170](#) is Section 4-90-70 which provides in part that:

The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public school education. . . .

Finally, the South Carolina Supreme Court in [Moye v. Caughman, 265 S.C. 140 \(1975\)](#), declared that education is not a county function and that, consequently, the General Assembly is free to continue to enact local legislation regarding school matters. All of these factors indicate that, perhaps, county councils were not intended to exercise any powers with respect to education in its broadest sense. If the Legislature in fact intended this result, then the Council will not be empowered to change the method of appointing the Commission members on January 1, 1980. The question which you have posed, however, cannot be answered with certainty until its judicial resolution pursuant to the Uniform Declaratory Judgments Act ([§§ 15-53-10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976](#), as amended) is sought and obtained.

With kind regards,

Karen LeCraft Henderson
Serior Assistant Attorney General

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