

1978 S.C. Op. Atty. Gen. 155 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-123, 1978 WL 22591

Office of the Attorney General

State of South Carolina

Opinion No. 78-123

June 21, 1978

**\*1 SUBJECT: Education; School Districts; Employment**

(1) After February 17, 1978, the effective date of the Act amending Act No. 340 of 1967, the authority to employ and to institute dismissal proceedings for any principal in any of the schools in the Charleston County School District rested entirely with the Board of Trustees of the Charleston County School District.

(2) The trustees of the constituent districts in Charleston County may make annual recommendations to the County Board of Trustees concerning the employment of principals in the schools, but the County Board is not required to act on such recommendations.

(3) The annual renewal of employment contracts with principals by the County Board of Trustees would not constitute an 'appointment' as contemplated by § 5(16) of Act No. 340 of 1967, as amended; and the County Board would request the recommendations by the trustees of the constituent districts of three qualified persons from which to appoint a principal only if the County Board declared a vacancy in the position to exist.

(4) The Board of Trustees of the Charleston County School District may not designate a constituent board of trustees to conduct a hearing for the initiation of dismissal proceedings involving principals employed in Charleston County Schools.

TO: William B. Todd  
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Charleston County School District

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**QUESTIONS:**

Under the provisions of 60 STAT. Act No. [R425, S449] (February 17, 1978), amending 55 STAT. Act No. 340 (1967):

1. Can a constituent board in the Charleston County School District initiate proceedings to dismiss a principal under his 1977-78 contract of employment ending June 30, 1978?
2. Can a constituent board in Charleston County School District make annual recommendations to the board of trustees of the Charleston County School District concerning employment of principals?
3. Is the board of trustees of Charleston County School District required annually to appoint the principals of all schools in Charleston County from among three qualified persons recommended by the trustees of the constituent school district in which the particular school is located?

4. Can the Charleston County Board of Trustees designate a constituent board of trustees as a hearing body in dismissal proceedings involving principals.

STATUTES AND CASES:

60 STAT. Act No. [R425, S449] (February 17, 1978);

55 STAT. Act No. 340 (1967);

[S.C. Code Ann. §§ 59–15–40](#); 59–19–110 (1976), as amended;

[Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975);

[Wright v. City of Florence](#), 229 S.C. 419, 93 S.E.2d 215 (1956);

[State v. Wannamaker](#), 213 S.C. 1, 48 S.E.2d 601 (1948);

2 Am.Jur.2d, [Administrative Law](#), § 222, p. 52;

16 Am.Jur.2d, [Constitutional Law](#), § 443, p. 792;

\*2 63 Am.Jur.2d, [Public Officers and Employees](#), § 130, pp. 709–10;

78 C.J.S., [Schools and School Districts](#), § 184, p. 1036;

78 C.J.S., [Schools and School Districts](#), § 184, p. 1032;

78 C.J.S., [Schools and School Districts](#), § 201, p. 1074.

DISCUSSION:

1. 55 STAT. Act No. 340(167) provides for a consolidated school district in Charleston County. This Act also sets out specifically the powers and duties of the board of trustees of the Charleston County School District, as the governing body of the consolidated district. Act No. 340, [supra.](#), § 5. However, Act No. 340 retains the eight school districts as special districts for administrative purposes, referring to same as ‘constituent districts’. Act No. 340 specifically spells out the administrative functions of the constituent districts. [See](#) Act No. 340, [supra.](#), at § 7. Before amendment, Act No. 340, in § 6, provided:

The teachers and other constituent district personnel necessary for the efficient operation of the schools in each constituent district shall be employed by the trustees thereof, subject to the approval of the board of trustees of the Charleston County School District.

Under this law, before amendment, each constituent district employed principals for the schools located in the respective constituent districts.

Effective February 17, 1978, Act No. 340 of 1967 was specifically amended to provide that the board of trustees of the Charleston County School District shall ‘appoint the principals of all schools in Charleston County from among three qualified persons recommended by the trustees of the constituent school district in which the particular school is located.’ [See](#) 60 STAT. Act No. [R425, S449] (February 17, 1978). Section 6 of Act No. 340 is specifically amended to read:

The teachers and other constituent district personnel necessary for the efficient operation of the schools in each constituent district, except for school principals, shall be employed by the trustees thereof, subject to the approval of the board of trustees of the Charleston County School District. (Emphasis added.)

Because of the amendment to Act No. 340 of 1967, several questions have arisen as to the authority of the constituent districts with regard to principals presently in the employ of the constituent districts, and with regard to the constituent districts' future authority.

The General Assembly has constitutional responsibility for the establishment, organization, operation, and support of a state system of public education. See [Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975). On that basis, the extent of the power of school authorities to enter into contracts of employment with principals or teachers depends entirely on the terms of the statutory grant as enacted by the General Assembly. See 78 C.J.S., Schools and School Districts, § 184, p. 1036. Commensurate with the authority to determine who shall exercise the power of appointment or employment for the school districts is the authority to remove such power; and accordingly, the General Assembly may remove such power from one school board or official and vest it with another school board or official having jurisdiction within the school district. See 78 C.J.S., Schools and School Districts, § 184, p. 1032. The 1978 amendment to Act No. 340 of 1967 specifically transferred the statutory power of employment for school principals in the schools in Charleston County from the respective constituent districts to the board of trustees of the Charleston County School District.

\*3 The effective date of the amendment transferring the express statutory authority for employment of school principals was February 17, 1978. Therefore, on and after that date, all contracts of employment between school principals in the schools in Charleston County must be made by the board of trustees of the Charleston County School District, rather than by the respective boards of trustees of the constituent districts. Conversely, the power to remove or dismiss a principal is exercised as a power implied from the power to employ, and necessarily was vested entirely with the board of trustees of Charleston County School District on and after February 17, 1978. 78 C.J.S., Schools and School Districts, § 201, p. 1074.

To the extent that the amendment of February 17, 1978, affects existing contracts between the constituent districts and school principals in the various schools in Charleston County, it is the opinion of this Office that there is no impairment of the obligation under the existing contracts. Instead, the amended law constitutes a withdrawal of a legislative grant or privilege, or authority of appointment, which is permissible. Cf., [Wright v. City of Florence](#), 229 S.C. 419, 93 S.E.2d 215, (1956); 16 Am.Jur.2d, Constitutional Law, § 443, p. 792.

It is our further opinion, based on these general principles of law, that on and after February 17, 1978, the respective boards of trustees of the constituent school districts in Charleston County are not authorized to initiate dismissal proceedings for a principal employed in one of the schools located in a constituent school district. After February 17, 1978, this authority to dismiss a principal was vested by the General Assembly solely in the board of trustees of the Charleston County School District, despite the fact that the contract of employment for the school year 1977–78 may have been executed prior to February 17, 1978, by the constituent board of trustees.

2. Section 7 of Act No. 340, *supra.*, states, in part:

The trustees in each of the constituent districts . . . shall annually make recommendations to the board of trustees of the Charleston County School District relative to the educational affairs of the respective districts.

This provision was not amended by the 1978 Act, and remains in force and effect. Consequently, a constituent board of trustees can make annual recommendations to the board of trustees of the Charleston County School District concerning employment of principals of schools located in the particular constituent school district, since this would constitute a

matter 'relative to the educational affairs' of the district. However, the law as presently written would not require the board of trustees of the Charleston County School District to act on any given recommendation.

3. The amendment of Act No. 340 specifically contemplates that the board of trustees of the Charleston County School District will 'appoint' the principals of the schools from three qualified individuals chosen by the constituent district. As a general matter of law, if the Legislature does not designate the term of office, the appointee will hold office at the will of the appointing power, until removed from office. See [State v. Wannamaker](#), 213 S.C. 1, 48 S.E.2d 601 (1948). There is no 'vacancy' in the position of principal for a given school until the County Board of Trustees acts to remove the principal, or there is a resignation, death, or some other like occurrence which creates a vacancy. See 63 Am.Jur.2d, [Public Officers and Employees](#), § 130, pp. 709–10.

\*4 In our opinion, this is true even in instances where a principal is employed under a contract renewed annually. Unless the County Board of Education refuses to renew the contract, or the principal resigns, or is dismissed, or his office otherwise becomes vacant during the year, there exists no vacancy to which an 'appointment' must be made by the County Board of Trustees. Under this view, the 1978 amendment to Act No. 340 does not contemplate an annual submission of names by the trustees of the constituent school districts. An 'appointment' of a principal would occur only after the county board of trustees declared the position vacant because of dismissal, resignation, death, or otherwise, and requested the recommendation by the trustees of the constituent school district of three qualified persons from which to make an appointment. The annual renewal of contracts with the principals of the various schools in Charleston County, unless otherwise specified by the county board of trustees, would not produce a vacancy or require an 'appointment' by the County Board as contemplated by § 5(16) of Act 340 of 1967, as amended.

4. Section 5 of Act No. 340 of 1967 specifically provides that the Board of Trustees of the Charleston County School District shall have the duties, powers, and responsibilities provided by general law for county board of education and for school district trustees. The general law permits both the county board and the district board of trustees, by rule, to designate 'one or more of its members to conduct any hearing in connection with any responsibility of the board and to make a report on this hearing to the board for its determination'. See [S.C. Code Ann. §§ 59–15–40; 59–19–110](#) (1976), as amended. These statutes make no provisions for further delegation of hearing authority beyond the designation of one of the board's own members. Likewise, Act No. 340 of 1967 makes no provision for the delegation of the county board of trustees' authority to conduct hearings beyond that found in the general statutes, and the board of trustees of the respective constituent districts are not provided the power to conduct hearings on behalf of the county board.

The general principle of law provides that a delegated power may not be further delegated, particularly where the delegated power requires acts discretionary or quasi-judicial in nature. 2 Am.Jur.2d, [Administrative Law](#), § 222, p. 52. Since a hearing conducted by the board of trustees of the Charleston County School District concerning the dismissal of a principal would clearly require actions and decisions discretionary or quasi-judicial in nature, and since the general law specifically restricts the delegation of the authority to conduct the hearing to the county board or one of its own members, it is the opinion of this Office that the county board of trustees has no authority to designate a constituent board of trustees as its delegation to conduct a hearing for the initiation of dismissal proceedings involving principals employed in the schools in Charleston County.

#### CONCLUSION:

\*5 1. After February 17, 1978, the effective date of the Act amending Act No. 340 of 1967, the authority to employ and to institute dismissal proceedings for any principal in any of the schools in the Charleston County School District rested entirely with the Board of Trustees of the Charleston County School District.

2. The trustees of the constituent districts in Charleston County may make annual recommendations to the County Board of Trustees concerning the employment of principals in the schools, but the County Board is not required to act on such recommendations.
3. The annual renewal of employment contracts with principals by the County Board of Trustees would not constitute an 'appointment' as contemplated by § 5(16) of Act No. 340 of 1967, as amended; and the County Board would request the recommendations by the trustees of the constituent districts of three qualified persons from which to appoint a principal only if the County Board declared a vacancy in the position to exist.
4. The Board of Trustees of the Charleston County School District may not designate a constituent board of trustees to conduct a hearing for the initiation of dismissal proceedings involving principals employed in Charleston County Schools.

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