

1978 WL 34980 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 12, 1978

\*1 James C. Casey  
Chairman  
Marion County Board of Education  
West Court Street  
Marion, SC 29571

Dear Mr. Casey:

You requested the opinion of this Office concerning several matters of local legislation involving education in Marion County. Please accept my apologies for the delay in replying to your request. Your specific questions will be treated individually.

(1) Does Act 734 of the 1976 Acts and Joint Resolutions devolve all appointive powers and powers of the recommendations for appointments formerly held by the county legislative delegation upon County Council?

Act 734 provides:

Beginning July 1, 1976, all appointive powers and powers of recommendation for appointments vested in the Marion County legislative delegation for appointment of county officials, boards, committees and commissions not otherwise provided for by the general law or the constitution of this State or devolved upon the governing body of Marion County.

Thus, county council, as the governing body of Marion County, has all the appointive powers and powers of recommendation for appointments that were formerly held by the Marion County legislative delegation. The statute does not enlarge the scope of the powers previously held by the delegation.

(2) May the General Assembly constitutionally delegate to the Marion County Council the authority to appoint members to the Marion County Board of Education?

Public education is a matter entrusted to the control of of the General Assembly under [Article XI, Section 3 of the South Carolina Constitution](#) which provides:

The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the State, and shall establish, organize and support such other public institutions of learning, that may be desirable.

[Article 3 of the South Carolina Constitution](#) does not require the General Assembly to enact legislation conferring upon the counties the power to control the public school system. However, the General Assembly, with the broad powers conferred to it by [Article XI, Section 3](#), is empowered to provide different provisions for school districts, and such different provisions do not infringe upon the 'home rule' provisions of the South Carolina Constitution. [Moye vs. Caughman](#), 265 SC 140, 217 SE 2d 36 (1975). It is not an illegal delegation of legislative power for the General Assembly to provide that the county board of education members shall be appointed by the Governor upon recommendations of the county delegation. [State vs. Byrnes](#), 219 SC 485, 66 SE 2d 33 (1951). It is the opinion of this Office that a similar delegation of the power of selection and appointment to the Marion County Council would not be an illegal delegation of legislative power.

Act 734 of the 1976 Acts and Joint Resolutions provides:

Beginning July 1, 1976, all appointed powers and powers of recommendations for appointments vested in the Marion County Legislative Delegation for appointment of County officials, boards, committees and commissions not otherwise provided for by the general law or the constitution of this State are devolved upon the governing body of Marion County.

\*2 Act 154 of the 1971 Acts and Joint Resolutions is a special act that provides that the board of education of Marion County shall be appointed by the Governor upon the recommendation of a majority of a legislative delegation residing in the county. It is the opinion of this Office that Act 734 repealed special Act 154 in that the appointive powers to the county board of education were transferred from the county's legislative delegation to the county council.

(3) May Marion County Council, by ordinance, change the method of signing the educational vouchers provided for in Section 1, Part 2, of Act no. 867 of the 1976 Acts and Joint Resolutions?

Act No. 867, Part 2, Section 1, provides that:

The clerk in the county superintendent's office and any three members of the county board of education are hereby authorized to sign vouchers, papers, or any other documents related to the office of the county superintendent of education.

This provision, passed as part of the permanent County Appropriations Act, is the law of this State as defined by the General Assembly, and, therefore council may not change the authorization to sign education vouchers given the clerk and county superintendent's office and (any three members) of the board of education. Article 11, Section 3, of the South Carolina Constitution grants the General Assembly power to provide for the maintenance and support of public schools in South Carolina. Absent a delegation of certain specific authority to the county board, the board is powerless to enact legislation concerning school matters.

(4) May the Marion County Board of Education take action to consolidate the County's school districts?

Act 410 of the 1975 Acts and Joint Resolutions states in Part 2, Section 5, a permanent part of the County Appropriations Act, that:

Each school board of trustees shall be the sole authority in determining any merger or consolidation with any other school district of the county (referring to Marion County).

It is clear that the General Assembly may make different provisions for school districts in South Carolina. Moye vs. Caughman, *supra*. Since Act 410, a special law, is the last legislation passed concerning the consolidation of schools in Marion County, and since no general law has been enacted by the General Assembly since that date, it is the opinion of this Office that the decision as to whether the school districts should be merged or consolidated lies with the appropriate school board of trustees and not with the county board of education. Criterion Ins. Co. vs. Hoffmann, 258 SC 282, 188 SE 2d 459 (1972), Culbreth vs. Prudence Life Ins. Co., 241 SC 46, 127 SE 2d 132 (1962).

Since it is the opinion of this Office that the county board of education has no authority acting on its own to consolidate school districts in Marion County, it follows that the board lacks the authority to partially consolidate the school districts. Absent a statutory change in the authority granted the county board of education, the county board is precluded from taking any action concerning merger or consolidation of school districts in Marion County.

\*3 Please do not hesitate to contact me if I can be of further assistance to you in this matter.

Very truly yours,

Frank H. DuRant  
Assistant Attorney General

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