

1975 WL 29495 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 11, 1975

*1 The Honorable William W. Doar, Jr.
Senator
Post Office Drawer 418
Georgetown, South Carolina 29440

Dear Bill:

Thank you for your letter of February 7 reading as follows:

‘As you may know, the Georgetown County Board of Education desires to make some changes in their makeup. I checked into this and was advised that due to the local legislation problem, no changes could be made. The question has now arisen as to whether or not, assuming that the local government bill passes, the Board of Education can pass an ordinance abolishing the position of Superintendent of Education. In other words, since our Board of Education is separate and apart from County Council, would they, likewise, have legislative authority?’

I have been advised that the present draft of the House and Senate bills specifically exclude educational matters from powers to be given to counties. If the local government implementation follows this procedure, there would appear to be no basis for any action by the Boards of Education, Trustees, etc.

On the other hand, if the county governing bodies are vested with any authority with respect to existing State statutes, a more serious question could be presented as to whether any local entity could be vested with authority to change such a statute. I think that this is a matter which is vested exclusively in the legislative Branch by the Constitution and that power cannot be delegated. The general rule which the Supreme Court follows is that the Legislature cannot delegate its power to make a law, but it can make a law to delegate a power to determine some fact or state of things, upon which the law makes or intends to make its own action depend. Thus, if a statute provides that a Superintendent of Education shall be elected in a certain county, I do not think that the power to repeal that statute can be vested in any agency except the Legislature itself. This area of the law is obscured by some of the decisions of the Supreme Court throughout the years and has led to some vigorous dissents, as in the case of Cole v. Manning cited below. The decisions of the Court appear to give a strict or liberal interpretation to the doctrine of the delegation of powers, depending upon the circumstances of each case. The Court appears to generally sustain a statute authorizing an administrative agency or political subdivision to ‘fill up the gaps’ if some reasonable standard for supplying the details is established in the basic law, but this is entirely different from merely vesting an agency or political subdivision with the power to determine the applicability or non-applicability of a statute. As indicated, it is my view that the Court will not sustain such a grant of power.

The foregoing must be considered in connection with the provisions of the local government amendment, which provides in Section 7 that ‘the General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties.’ I doubt very seriously if this is sufficient to empower the counties with authority to make inapplicable a Statewide statute. As already noted, the draft provisions do not propose to vest in the counties any authority with respect to educational matters. I think that this could be accomplished, if desired, by a statute repealing all statutes relating to election or appointment of Superintendents of Education or statutes relating to the existence of the position of Superintendent of Education and vesting in all Boards of Education authority to employ a Superintendent or to provide for his election. I recognize, however, that a serious question of delegation of power could be made in such a statute.

*2 I am not aware, however, of such a proposal.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

1975 WL 29495 (S.C.A.G.)

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.