

1975 S.C. Op. Atty. Gen. 52 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3979, 1975 WL 22277

Office of the Attorney General

State of South Carolina

Opinion No. 3979

March 3, 1975

**\*1 Re: No. 268—Schools**

Mr. John M. Spratt, Jr.  
Attorney at Law  
P. O. Drawer 299  
York, South Carolina 29745

Dear Mr. Spratt:

As attorney for School District No. 1 of York County, you request our opinion regarding the construction and application of Section 21–247 of the South Carolina Code of Laws. That statute reads in part:

[A]ny person aggrieved by any decision of the board of trustees of any school district in any matter of local controversy in reference to the construction or administration of the school laws . . . within the district, shall have the right to appeal the matter in controversy to the county board of education by serving a written petition upon the chairman of the board of trustees, the chairman of the county board of education and the adverse party within ten days from the date upon which a copy of the order or directive of the board of trustees was delivered to him by mail or otherwise. . . .

School District No. 1 has been embroiled in a controversy over the designation of the school mascot and school colors for a new high school now under construction, to be known as York Comprehensive High School. The new high school will consolidate the two existing high schools in York School District No. 1, York High School and Hickory Grove High School. In 1970, Jefferson High School, the black high school in York, was consolidated into York High School. The new York Comprehensive High School will therefore represent the consolidation of the three previously existing high schools in this district. Among the decisions to be made in completing the plans for consolidation were the name of the school, the school mascot, and the school colors. At a meeting of the Board of Trustees of York School District No. 1 on January 14, 1975, it was decided that the new high school should be named York Comprehensive High School; and it was also decided that the school mascot should be a green dragon and the school colors should be green and white, which have been the traditional mascot and colors of York High School. This decision was met with resistance by black students and by students from Hickory Grove. The black students and their parents have maintained that they were assured when Jefferson High School was consolidated into York High School that a change of school colors and school mascot would be considered when Hickory Grove High School was merged with York High School. The students and parents at Hickory Grove contend that they are losing their high school, a local institution, and that they should be shown more consideration in light of the sacrifice they are making. They have conceded that the new school should be named York Comprehensive High School, but they strongly feel that new school colors and mascot should be chosen. Many of the black students and their parents of the district have formed a coalition with students and parents from Hickory Grove. As a result of the efforts of the coalition, from January 23rd to February 18th, there was a school boycott by many black students at York High School and by virtually all of the students at Hickory Grove High School. During this period, there were public and private meetings with the Board of Trustees, at which the coalition sought a reversal of the Board's position. On February 17, 1975, the Board of Trustees met exclusively for the purpose of considering sanctions against boycotting students. Following this meeting, the leader of the coalition group requested of the Chairman of the Board of Trustees a written statement of the Board's position. His objective was to obtain 'a copy of an order or directive' within

the meaning of Section 21–247, in order to have a basis from which to appeal to the York County Board of Education. See, Letter to Daniel R. McLeod from John M. Spratt, Jr., February 21, 1975.

\*2 Specifically, we are asked to advise you as to whether or not the controversy in the district surrounding the Board's decision involving the selection of school colors and of a school mascot for the new high school constitutes, under Section 21–247, 'a matter of local controversy in reference to the . . . administration of the school laws' which any person aggrieved thereby may appeal to the York County Board of Education.

In South Carolina, boards of trustees possess the power to '[m]anage and control local educational interests of its district.' CODE OF LAWS OF SOUTH CAROLINA § 21–230(7), as amended. Because the selection of school colors and school mascots clearly affects the local educational interests of a school district, a board of trustees has the implied authority to designate for each school within the district what, if any, its school colors and school mascot are officially to be. Just as the employment by a board of trustees of a teacher whose employment will result in harm to the school in which the teacher is to teach constitutes a 'matter of local controversy' [[Stanley v. Gary](#), 237 S.C. 237, 116 S.E.2d 843], so too, in our opinion, does the designation of school colors and a school mascot whose selection may result in harm to the school for which the colors and mascot have been selected. Any person, therefore, who is aggrieved by the decision of the Board of Trustees of School District No. 1 in York County that designates as school colors and as a mascot for York Comprehensive High School the colors of green and white and a green dragon may appeal to the county board of education. The selection of school colors and of a mascot, in our judgment, constitutes, under Section 21–247, 'a matter of local controversy in reference to the . . . administration of the school laws,' namely, the administration of the statute which empowers a board of trustees to 'manage and control local educational interests of its district,' Section 21–230(7), as amended.

You also inquire as to when the ten (10) day period for appeal begins to run. Does it, you ask, begin to run when the resolution adopted by the Board of Trustees has been reduced to writing and delivered to the aggrieved party or does it begin to run when the Board's decision has been publicly announced and published by the news media? In our view, the statute expressly contemplates that the order or directive of the Board manifesting its action is to be reduced to writing and delivered to the aggrieved party or that party's attorney. The ten (10) day period for appealing the Board's decision does not begin to run until the aggrieved party or that party's attorney has been served with a copy of the Board's order or directive. Any appeal not made within the time prescribed by Section 21–247 would, of course, come too late.

You further inquire as to whether or not the Administrative Secretary of the York County Board of Education has the right to vote on matters coming before the Board, including appeals to the Board made pursuant to Section 21–247 from an order or directive of a board of trustees in York County.

\*3 In 1962, the office of County Superintendent of Education in York County was abolished and the office of Administrative Secretary was created. See, CODE OF LAWS OF SOUTH CAROLINA § 21–4301 (Cum. Supp.). All duties and powers which had been imposed by law upon the County Superintendent of Education were devolved upon the Administrative Secretary. Ibid. The Administrative Secretary is appointed by the Governor. Ibid.

Section 21–101 provides in part:

The county superintendents of education shall be ex officio members of the county boards of education in those counties in which the county superintendent of education is elected by the people . . .

Our research indicates that the County Superintendent of Education was popularly elected. See, CODE OF LAWS OF SOUTH CAROLINA § 21–61 and §§ 21–21–4302 et seq. A duty and power previously imposed by law upon that officer which, by the 1962 statute, was devolved upon the Administrative Secretary was the duty and power of serving as an ex officio member of the York County Board of Education. Even though the Administrative Secretary is not elected but is

appointed, we feel, nonetheless, that it was the General Assembly's intent that that officer serve as an ex officio member of the York County Board of Education. Had the General Assembly intended otherwise, it would not have prescribed that the Administrative Secretary was to have developed upon him all the duties and powers that were possessed by the County Superintendent of Education of York County prior to the enactment of the 1962 statute.

As an ex officio member of the York County Board of Education, the Administrative Secretary serves on an equal basis with all other members of that board. An ex officio member of a board has authority to vote as a member of a board and his statutory appointment ex officio makes him a member of the board for all purposes. See, Opinion No. 2365, 1967 OP.ATTY.GEN. 208. The Administrative Secretary, therefore, has the right to vote on all matters which come before the York County Board of Education, including appeals from local boards of school trustees taken pursuant to Section 21-247.

Kindest personal regards,

C. Tolbert Goolsby, Jr.

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