1974 WL 28046 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 11, 1974

***1** The Honorable William W. Doar, Jr.
State Senator
Post Office Drawer 416
Georgetown, South Carolina 29440

Dear Senator Doar:
In your letter of January 18, 1974, you enclosed a draft of a proposed bill which would change the composition of the Georgetown County Board of Education. It contains other details with respect to the election of the members of the Board and also abolishes the office of County Superintendent of Education.

In the light of the provision of Article VIII of the South Carolina Constitution, which prohibits the enactment of laws for a specific county, and particularly in view of the fact that the Supreme Court of this State has not ruled upon the application of this provision in this context, an unqualified and confident opinion cannot be expressed with respect to the validity or nonvalidity of such legislation. In construing older and still continuing provisions of the Constitution with respect to special laws, the Supreme Court has previously generally viewed school legislation in a more liberal way and has usually sustained such enactments on the grounds that rational differences of circumstances exist in the various counties, warranting special legislative treatment of school matters. Whether they will continue such a judicial attitude with respect to special legislation concerning schools and their organization in considering legislative enactments subsequent to March 7, 1973, the date of ratification of the local government amendment, is a matter which is very uncertain. See McElveen v. Stokes, 240 S.C. 1, 124 S.E.2d 592.

A case entitled Knight v. Salisbury is now en route to the Supreme Court of this State, which may cast some light upon the problem.

The cases cited in McElveen v. Stokes, concerning school matters, dealt with financial matters of schools, and the rationale of those cases was that such matters are of such a diverse nature among the counties as to preclude uniformity of treatment, but the court refused to extend those cases so as to permit a departure from the general scheme for the selection of county forestry boards, particularly in view of the fact that there was no prior departure from such general scheme of selection. Those circumstances do not now exist with respect to the election of superintendents of education; in a number of counties, the position of superintendent of education has been abolished, as this bill would provide. This fact may persuade the Supreme Court to hold that uniformity of selection of superintendents is not required.

My conclusion is that the bill is of doubtful validity, in that it constitutes special legislation for which there is no reasonable or rational basis different from that prevailing in other counties, but I recognize that this opinion is not based upon clear-cut decisions of the Supreme Court of this State.
Very truly yours,

Daniel R. McLeod
Attorney General

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