

1974 WL 27456 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 21, 1974

\*1 E. P. Riley, Esq.  
County Attorney  
Post Office Box 10084 F.S.  
Greenville, South Carolina 29603.

Dear Mr. Riley:

Thank you for your letter of May 31, 1974, in which you inquire whether or not the school districts of Greenville County may employ its own attorney or if they are legally bound to utilize the services of the County Attorney.

South Carolina Code of Laws, 1962, Section 21-111 states in part  
Every school district is and should be a body politic and corporate . . . it may sue and be sued and be capable of contracting and being contracted with . . .

In the case of [Pasley v. Brooks](#), 198 S.C. 345, 17 S.E.2d 865 (1941) the court held that

The capacity to sue and be sued carries with it all powers that are ordinarily incident to the prosecution or defense of an action at law or a suit in equity, including the power to hire counsel. But a school district having the capacity to sue and be sued, and the authority to contract, has no right to exercise the power or employing counsel except in matters relating to its corporate rights and functions. It necessarily follows that a school district is without power to employ counsel and to pay his compensation out of public funds in matters not involving the interests of the schools of the district. [cite omitted] (emphasis added) See also 1963-1964 Attorney General Opinions No. 1602, 78 C.J.S. Schools and School Districts § 146, p. 956; [75 ALR2d 1339, 1345](#) § 3.

South Carolina Code of Laws, 1962, § 14-2081 establishes a county attorney for Greenville County and states that 'such attorney shall represent the political subdivisions of the county.' School districts have been construed as being political subdivisions of the State. [Patrick v. Maybanks](#), 198 S.C. 262, 17 S.E.2d 530; [Brooks v. One Motor Bus Carrying 1937-38 South Carolina License v. 1357, Motor No. 45590, Serial No. 40476](#), 190 S.C. 379, 3 S.E.2d 42. See also Words and Phrases, Political Subdivisions. However, research has not disclosed a case that has construed a school district as being a part of the political subdivision of the county. Additionally, in Greenville the situation exists where the School District crosses several county lines; therefore, it would be difficult to state that the Greenville County Attorney would represent school districts in other counties.

Therefore, it is the opinion of this office that an attorney may be employed by the Greenville County School District.  
Sincerely,

Treva Ashworth  
Assistant Attorney General

1974 WL 27456 (S.C.A.G.)