

1973 WL 26599 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 5, 1973

*1 The Honorable Gene W. Dukes
Member
House of Representatives
Dorchester County
Box 368
St. George, South Carolina 29477

Dear Mr. Dukes:

Thank you for your letter of January 30, 1973, reading as follows:

'I would greatly appreciate your advisory opinion as to the validity of a contract which has been entered into between the Trustees of a School District and a non-elected Superintendent of Education, which supposedly is valid for a three-year term. The Trustees rotate on and off this Board with approximately two of the seven coming off every year. Would, in your opinion, this contract be valid?'

It is my opinion that the contract is valid, but that it may be terminated when a new board comes into existence. A new board will come into existence, in my opinion, when a majority of the membership of the board is composed of members different from those members who constituted the board at the time of the execution of the original contract. In other words, when there is a new majority of the board, there is a new board which is not bound by the acts of its predecessor board in matters such as personal contracts. With regard to other contracts, a different rule will apply.

I reach this conclusion based upon the authorities set forth below and, in particular, the South Carolina case of [State ex rel. Acker v. Major](#), 94 S.C. 472, which clearly establishes that, in similar circumstances, when new members constituted a majority of a board, they were not bound by the acts of their predecessor members in contractual matters of this nature. In your particular case, the addition of two new members at two-year intervals would not constitute a change creating a new majority of seven. Even if some of the other five old members dissented from the original contract, it is my opinion that they are bound by the actions of the majority of the old board and I do not feel that they could join with the new members in forming a 'new majority.' On the contrary, it is my view that there must be an addition of new members sufficient to constitute a majority of the seven-member board before an existing contract of the type referred to in your letter may be terminated.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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