

1973 WL 27680 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 15, 1973

**\*1 Re: No. 262—Schools—Districts/Saluda County**

Mr. Carl L. Holloway, Jr.  
Office of Research  
Legal Affairs  
State Dept. of Education  
Rutledge Building  
Columbia, South Carolina

Dear Lee:

In answer to your request for an opinion on the affect of Judge Hemphill's order of February 23, 1973, in Civil Action 69-460, relating to the status of Hollywood School District No. 4 in Saluda County, I am of the opinion that Saluda School District No. 4 is a de facto school district. Its de facto status is based upon the attempt to establish such district under the laws of South Carolina, even though such creation was invalid and upon Judge Hemphill's order providing for the operation of Saluda School District No. 4 until a determination by the United States Justice Department under the Voting Rights Act.

In his order filed February 23, 1973, Judge Hemphill on Page 4 of the order provided:

[T]his Court's January 26, 1970 order, providing for the operation of the Hollywood Schools by the Board of Trustees of Saluda County School District No. 1, shall be reinstated. It is the Court's judgment, however, that dissolution of the August 17 and September 1 orders at this time would not be educationally or administratively sound. Accordingly, this Court's orders of August 17 and September 1, 1972, shall be dissolved effective June 30, 1973, or at the conclusion of the school year, which ever comes earlier, and the Court's January 26, 1970 order fully reinstated.

In effect this order of Judge Hemphill provides for the consolidation of the de facto District No. 4 and the dejure District No. 1 under the Board of Trustees for Saluda School District No. 1, effective July 1, 1973. In light of the effect of this Order, I am of the opinion that School District No. 1 would assume the assets and liabilities of the de facto School District No. 4 similar to that provided for in Section 21-114.3, Code of Laws of South Carolina. Any contracts made on an annual basis should be made by District No. 1 for next year, since this is the Board that will be operating the re-united district next school year. The two separate school Boards should continue to operate as they are currently for the remainder of this school year, with the members on the District 4 Board resuming their positions on the District No. 1 Board as of the beginning of the new school year. (Some attention should be given to the limit of bonded indebttness in light of the imminent consolidation. See [Boatwright v. McElmerray](#), 247 S.C. 199, 146 S.E.2d 716 (1966).)

Undoubtedly there may be some issues that may not be resolved to the satisfaction of the respective boards and individual citizens; such issues should be made the subject of a declaratory action under the provisions of Section 10-2001, et seq., Code of Laws of South Carolina as amended.

Please feel free to contact me if there are any specific questions that arise.

Sincerely,

**\*2** Hardwick Stuart, Jr.

Assistant Attorney General

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