

1973 S.C. Op. Atty. Gen. 270 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3601, 1973 WL 21056

Office of the Attorney General

State of South Carolina

Opinion No. 3601

August 20, 1973

*1 The Honorable John C. West

Governor

Columbia, South Carolina

Dear Governor West:

You have requested that this Office advise you as to the extent of your authority in the appointment of members of the county boards of education.

Section 21–101 of the Code of Laws of South Carolina, 1962, provides, in part:

‘There shall be a county board of education in each county which, except as otherwise expressly provided, shall be composed of seven members, six of whom shall be appointed by the Governor upon the recommendation of the Senator and at least one half of the members of the House of Representatives from the county—.’

Following established precedents of statutory construction, the Governor's power of appointment in this instance must be based upon the legislative recommendation. [McCullum v. Snipes](#), 213 S.C. 254, 49 S.E.2d 12. The discretion afforded the Governor in making these appointments is limited by the well defined constitutional doctrine of the separation of powers. Each of the three coordinate branches of government, namely the executive, the legislative and the judicial, is within the sphere of its constitutional and governmental powers, independent and free from the control of the others. Within these limits the legislative cannot control the executive, nor the executive control the legislative. The Governor is, by the Constitution, vested with certain important governmental or political powers and duties belonging to the executive branch of the State government, and the due performance of these duties is entrusted to his official honesty, judgment and discretion.

Aside, however, from the governmental, political, or discretionary powers and duties vested in the Governor by the Constitution, there is another class of powers and duties imposed upon him which do not necessarily belong to his office as part of the functions to be performed by him, which are created by express statute, and are merely ministerial in their nature. The ministerial acts required of the Governor are those which must be performed upon a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority and without regard to his own judgment or opinion concerning the propriety or impropriety of the act to be performed. [Martin v. Ingham](#), 38 Kan. 641, 651, 17 P. 162, 168.

It appears to be clear that the statute providing for the appointment by the Governor of the members of the county boards of education, places a purely ministerial duty upon the Governor to make such appointments upon the legislative recommendation. [Blalock v. Johnson](#), 180 S.C. 40, 185 S.E.51. It also appears to be clear that the appointment must be based upon such recommendation if it is to be legal. [Elledge v. Wharton](#), 89 S.C. 113, 71 S.E. 657.

It is therefore the opinion of this Office that Section 21–101, *supra*, imposes the positive duty upon the Governor to make the appointment at a time and in a manner upon the conditions specifically designated; in other words, to make his appointment based upon the legislative recommendation. The Governor's appointive power in this instance is a simple definite duty arising under statutory conditions leaving nothing to discretion. It is a purely ministerial duty. See [Marbury v. Madison](#), 1 Cranch 137, 170, 2 L.Ed. 60, 71; [People v. Morton](#), 156 N.Y. 136, 50 N.E. 791; [Mississippi v. Johnson](#), 4 Wall (U.S.) 475, 498, 18 L.Ed. 437, 440.

*2 You have further requested that this Office advise you as to your power to remove members of the county boards of education appointed pursuant to Section 21–10, Code of Laws of South Carolina, 1962.

The executive power of removal is generally found in the Constitution, State of South Carolina, Article 3, Section 27, and statutory sections: § 1–124; § 50–9; and § 50–10. A reading of these provisions reveals that the executive power of removal is restricted to instances of misconduct, persistent neglect of duty in office, conviction of certain crimes or where the officer is indicted for a crime, at which time the Governor may order his suspension.

It is, therefore, the opinion of this Office that the power of the Governor to remove members of the county boards of education is restricted to those constitutional and statutory provisions set forth hereinabove. See [State v. Pridmore](#), 163 S.C. 97, 161 S.E. 340; [State v. Ballentine](#), 152 S.C. 365, 150 S.E. 46; [Hearon v. Calus](#), 178 S.C. 381, 183 S.E. 13.

It might be noted that there are specific statutes pertaining to individual counties, which could change the method of appointment or removal of board members; however, this Office is aware of none. If a specific county board is in question, this Office will make an individual determination.

Very truly yours,

Daniel R. McLeod
Attorney General

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