

1973 WL 27615 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 20, 1973

*1 The Honorable Norma Russell
Member
House of Representatives
Lexington County
92 Nob Hill Road
Columbia, South Carolina 29210

Dear Mrs. Russell:

You have inquired as to whether a bill relating to school affairs in Lexington County constitutes special legislation. The bill provides for the abolition of the office of the County Superintendent of Education in Lexington County, as well as the abolition of the Board of Education of Lexington County. It further provides that, effective July 1, 1973, school district trustees shall be appointed by the legislative delegation for fixed terms of office.

The prohibition against special legislation as contained in Article VIII of the State Constitution, in my opinion, most probably will ultimately be construed in the same manner as the pre-existing and continuing provisions of Article III, Section 34, of the Constitution, and if this procedure should be followed, matters relating to school duties are generally not considered as special legislation. It is only necessary to refer to the Code to demonstrate that various methods for the numbers and means of selecting school trustees is required.

I am aware of only one county which has abolished its Board of Education and, in that instance, its duties were devolved upon another entity. The inclusion of a similar provision so as to maintain a central authority within the county to govern educational interests in the same manner as is now provided generally for Boards of Education would appear desirable and, in my view, it would strengthen the validity of this type of legislation. County Boards of Education exercise many functions such as appeals, consolidations, and approvals of construction educational facilities applications, and the absence of a central authority could lead to uncertain legal situations.

The position of the Supreme Court has heretofore been to generally leave the operation of schools within the various counties to the discretion of the General Assembly, the Court thereby recognizing that uniformity of legislative treatment of school matters is not required.

The new constitutional provision has not received construction by any court in this State and, consequently, there is no precise precedent upon which to base an opinion. It is my view, however, that it is most probable that the construction heretofore given to the prohibition against special legislation will generally be followed in the application of the new constitutional provision.

Very truly yours,

Daniel R. McLeod
Attorney General

1973 WL 27615 (S.C.A.G.)