1973 WL 26961 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
November 7, 1973

***1** Dr. Charles E. Palmer
Executive Director
State Board for Technical and Comprehensive Education
1429 Senate Street
Columbia, South Carolina 29201

Dear Dr. Palmer:
You have raised certain questions of statutory interpretation concerning what interpretation the word 'concurrence' as used in the sentence referring to concurrence by the different boards and agencies, should be given; and exactly what boards and agencies must agree to specified changes. These questions concern Section 21-704.13 as found in South Carolina Code of Laws, 1972 Supplement.

If the ward 'concurrence' is given its ordinary meaning, as is required in questions of statutory interpretation [See 82 C.J.S. Statutes § 329(b); McCollum v. Snipes, 213 S.C. 254, 49 S.E.2d 12 (1948); Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942)] it would apparently require obtaining assent by all of the boards concerned before a major modification could be enforced; one negative vote by a board or agency would negate the plan.

However, a unanimous decision within each of the individual boards and agencies would apparently not be necessary. The statute speaks of concurrence i.e. assent, by each of the specified agencies; this does not by implication require the affirmative decision of each agency to be unanimous. See 2 Am. Jur. 2d Administrative Law § 196; Nicholson v. Villepegue, 91 S.C. 231, 74 S.E. 506 (1911); State v. Board of Canvassers, 86 S.C. 451, 68 S.E. 676 (1910)

Therefore, it appears the separate agencies may disagree internally; the only required concurrence of affirmative votes being of the final decisions of these separate agencies.

The next consideration is which boards and agencies must vote on these major modifications. It would appear that only two would constitute a problem i.e., 'the board of trustees of the university directly affected' and 'legislative delegations affected'. The phrase 'the board of trustees of the university directly affected' apparently would apply to section three which refers to major modifications which allow university branches to become comprehensive institutions. BLACKS Law Dictionary, 4th ed. defines 'affect' as, 'to act upon; influence; enlarge or abridge . . .' See also Gilman v. Burlingham, 216 P.2d 252, 256, 188 Or. 418; and Words and Phrases 'Affect'.

By giving this word its ordinary, natural meaning it would appear that the board of trustees of a university would only be directly affected if a situation as specified in section three would arise; it would not have a direct interest in a change in a technical education school's curriculum or a proposed merger because the critical element of actually being affected by the change would be absent. It is stated at 82 C.J.S. Statutes § 345 that '. . . a statute must, or should, be read or construed as a whole, or in its entirety . . .'. By giving weight to this authority it appears the intent of the act was to establish a procedure if a question of allowing a university branch or center to become a comprehensive institution arose. In that situation, and that alone, the board of trustees of that university would be required to concur before the modification would be allowed; this assent not being required in the remaining two situations as a university would not be directly affected by these enumerated modifications.

***2** Applying the same reasoning, legislative delegations affected by the change in the schools in their county would have to agree in all three situations as they would have a vested interest in any of the enumerated alterations. The questions again becomes what is the true connotation of the word 'affected'. The word itself is broad and indefinite; however if working with the basic premise that the language of the statute itself will limit and define its own terms, it appears that the legislative delegations the legislature intended to confer this power upon would be the delegations of the counties in which the schools are located.

South Carolina Code of Laws, 1962, as amended, Section 30-203.1 Defines what will constitute a majority vote for a legislative delegation. It states in part
In multicounty senatorial districts, all reference in existing statutes relative to county affairs . . . in a determination of action by the delegation under the statutes, shall mean a majority of the members of the House of Representatives resident in the county when such county is without a resident Senator and one half of such members when such county has a resident Senator and shall include in all such counties with or without a resident Senator at least one Senator thereof in those districts having not more than two Senators and at least two Senators in those districts having at least three Senators; provided however, that this section shall not apply to any county having more than five members of the House of Representatives.

Applying this criteria to the specific counties involved in each individual situation will provide a guideline for what will constitute a majority vote within the delegation.

Therefore, in all major modifications without question the local governing or advisory board, the State Board of Technical and Comprehensive Education, the Commission for Higher Education, and the legislative delegation of the county in which the school is found must concur in the change. If the change is one as specified in section three i.e. allowing a university branch or center to become a comprehensive institution, then the board of directors of the university directly responsible for this school must also concur.
Sincerely,

Treva Ashworth
Staff Attorney

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