1972 WL 25210 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 18, 1972

***1** Mr. Roy McBee Smith
County Attorney
Spartanburg County
Post Office Box 5306
Spartanburg, South Carolina 29301

Dear Mr. Smith:
Thank you very much for your letter of February 11, 1972, inquiring as to whether individual members of various school district boards may be held personally liable, either individually or collectively, for their actions as members of the school board, in connection with a variety of problems such as busing, dismissal of non-tenure teachers, participation in athletic events, etc.

So long as the Trustees act within the scope of their authority and without will fullness, malice or corruption, it is my view that no liability rests upon them. There are possible applications of the Civil Rights Act, pursuant to which damages have been sought in a number of instances in this State. I am not aware that recovery has been made in any instance except in possibly one case concerning excessive use of police force in making arrest. The liability of boards, collectively or individually, is somewhat less, in that their action is not normally individual action, but the result of collective decisions. The University Trustees were recently sued for large sums of money in connection with the dismissal of a student. This action was brought under the Civil Rights Act, but as the Trustees were not served, the damages against them were dismissed. Other actions have been brought against a number of State officials, including judges and the doctors at the State Hospital, but no recovery has yet been made.

I, therefore, feel that so long as the Trustees act within the scope of their authority and act without willfulness, malice or corruption, they are not subject to liability, even if they may be mistaken in the judgment which they exercise. The chief South Carolina case in point appears to be Dunbar v. Fant, 170 S.C. 414, 170 S.E. 460, involving the State Bank Examiner.

You additionally inquire as to whether a school district may use its funds for the purpose of insurance liability policies designed to protect members of the school board and other school officials acting in the line of their duty.

In view of the fact that no liability, in my opinion, attaches in such instances, I have heretofore consistently adhered to the view that the procurement of liability insurance is not a proper expenditure of public funds. In some areas, specific grants of authority to purchase liability insurance is made, such as in regard to the use of explosives or dangerous chemicals in college and university classes. There may be some arguable points with regard to this question, but even if it be conceded that such expenditures are appropriate, I strongly feel that it should be made subject to legislative authorization. I reach this conclusion principally because of my view that public funds are thereby being expended to protect against a liability which does not exist, and, secondly, because the approach without authority of statute leads to officials being responsible in one area, but not in another, that is, one school district might afford protection to its officers to the extent of one hundred thousand dollars each, or more, whereas in another school district, judgments against a school official would be of no monetary value unless the individual member was personally responsive.

***2** With best wishes,
Very truly yours,

Daniel R. McLeod

Attorney General

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