

No. 2009-00565. /**/ p.c1 {text-align: center} /**/

Mississippi Attorney General Opinions

2009.

No. 2009-00565.

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2009-00565

AUTH:Reese Partridge

DATE:20090925

RQNM:Kevin Null

SUBJ:Schools

SBCD:179

Kevin Null, Esq.

Attorney at Law

P. O. Box 756

Ackerman MS 39735

Re: Delegation of power

Dear Mr. Null:

Attorney General Hood has received your request and assigned it to me for research and response.

Issues Presented

May a county board of education adopt a policy authorizing the county superintendent of education to accept resignations of contractual employees, and will such resignations be official without further action by the board?

Background

Your request letter provides the following background:

My enquiry centers on Section 37-9-55 of the Mississippi Code regarding the acceptance of resignations of contractual employees. The statute authorizes the Board of Education to approve such resignations, and the release of the employees from contract. Simply put, my question is: May the Board of Education authorize the Superintendent of Education via policy to accept such resignations and will such resignations be official without further action of the Board?

Applicable Law

Miss. Code Ann. Section 37-9-55 (1972) reads as follows:

Any appointed superintendent, principal or licensed employee in any public school who is under contract to teach or perform other duties and who desires to be released from such contract shall make application in writing to the school board of the school district for release therefrom, in which application the reasons for such release shall be clearly stated. If the board acts favorably upon such application for release, such superintendent, principal or licensed employee shall be released from his contract, and said contract shall be null and void on the date specified in the school

board's order. Miss. Code Ann. Section 37-7-301 (1972), as reenacted by Senate Bill 2328 (2009 Reg. Sess.), reads as follows: The school board of a school district may adopt any orders, resolutions or ordinances with respect to school district affairs, property and finances which are not inconsistent with the Mississippi Constitution of 1890, the Mississippi Code of 1972, or any other statute or law of the State of Mississippi. Except as otherwise provided in this section, the powers granted to the school boards in this section are complete without the existence of or reference to any specific authority granted in any other statute or law of the State of Mississippi. Unless such actions are specifically authorized by another statute or law of the State of Mississippi, this section shall not authorize a school board to: (a) levy taxes of any kind or increase the levy of any authorized tax; (b) issue bonds of any kind; or (c) enter into collective bargaining agreements.

Analysis and Conclusion

Section 37-9-55 specifically provides that subject employees who wish to be released from their contract shall make application to the county school board, and the county school board thereafter acts to approve or disapprove the application.

Section 37-7-301, sometimes referred to as the "home rule" statute for school districts, authorizes the school board to adopt local policies if they are not inconsistent with state law. Since 37-9-55 provides that the county school board, and not the superintendent, accepts and rules on the applications, Section 37-7-301 prohibits adopting a policy to assign such duties to the superintendent. Therefore, the answer to your first question is no. The answer to your second question is moot.

However, we find nothing in state law which prohibits the superintendent from making recommendations to the county school board regarding such applications.

Please let me know if you would like to discuss this matter or if I can be of further assistance.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By: Reese Partridge

Assistant Attorney General