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STATE OF ALABAMA

90-00032

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Honorable Charles D. Langford  
Member, State Senate  
District No. 26  
918 East Grove Street  
Montgomery, AL 36104

Boards of Education -  
Superintendents of Education

1. Where the Superintendent of Education has recommended a job applicant for employment by the local board of education, he should provide personnel files of that applicant, including resumes, transcripts, teacher certification documents and other pertinent information concerning that applicant to members of the board of education.

2. The relationship between the board, its members and the superintendent in employment matters is such that the board members act only as a corporate body and their board membership entitles them to employment information only as a corporate body.

Dear Senator Langford:

It has been brought to our attention that the previous opinion issued to you on the subject of the relationship of a board of education to its superintendent in the employment of personnel is and has been the subject of misinterpretation.

That opinion is therefore hereby withdrawn and the following substituted therefor.

QUESTION 1

Are members of school boards privy to review the personnel files of all job applicants, including resumes, transcripts, teacher certification documents or any other pertinent written information which might have some bearing upon reaching objective employment decisions?

FACTS AND ANALYSIS

There are several Code sections which are directly pertinent to your inquiry. Two of these are Code of Alabama 1975, Sections 16-8-23 (county boards of education) and 16-12-16 (city boards of education). These statutes are as follows:

Section 16-8-23:

"The county board of education shall appoint, upon the written recommendation of the county superintendent, all principals, teachers, clerical and professional assistants authorized by the board. The county board may suspend or dismiss for immorality, misconduct in office, insubordination, incompetency or willful neglect of duty, or whenever, in the opinion of the board, the best interests of the school require it, superintendents, principals, teachers or any other employees or appointees of the board, subject to the provisions of chapter 24 of this title."

Section 16-12-16:

"The city superintendent of schools shall nominate in writing for appointment by the city board of education all principals, teachers, supervisors, attendance officers, janitors and all other employees of the board and shall assign to them their

positions, transfer them as the needs of the schools require, recommend them for promotion, suspend them for cause and recommend them for dismissal, subject to the provisions of chapter 24 of this title.

"All persons so nominated for teaching or supervising positions shall hold certificates issued by the state board of education."

These statutes set out the manner in which local boards of education employ personnel. One provides that a county board of education is to appoint school personnel upon the written recommendation of the county superintendent. Therefore, the superintendent must recommend the appointment of the applicant before the board has any authority to act. Hembree v. Jefferson County Board of Education, 337 So.2d 9 (Ala.Civ.App. 1976). The other statute, applicable to cities, requires that also as to cities, the superintendent makes recommendations or nominations regarding the employment of school personnel before the city board of education has authority to act. Marsh v. Birmingham Board of Education, 349 So.2d 34 (Ala. 1977).

Thus, it is clear from both the statutes and case law that, as to applicants for employment, the only consideration for a local board of education is whether the person or persons recommended by the superintendent are qualified to fill the position for which they are recommended. The board has no authority to force the superintendent to make any recommendation of a specific person or to consider for employment any person not recommended by the superintendent. Therefore, the applications, etc., of only those persons who have been recommended for employment by the superintendent are pertinent to any consideration being made by the board in the employment process. The applications of those persons who have not been recommended by the superintendent have no bearing on the board's employment decisions.

#### CONCLUSION

Because the board of education may only consider for employment those persons recommended by the superintendent, board members as such have no authority beyond that of public or private citizens to review personnel files of job applicants who have not been recommended for employment by the

superintendent since such applications are not pertinent to the inquiry of whether the person recommended is qualified to fill the vacant position. The pertinent information to be supplied is the information available on those applicants who have been so recommended.

#### QUESTION 2

Are you aware of any circumstances which would permit a superintendent to legally deny school board members access to the above information? If so, please explain.

#### FACTS AND ANALYSIS

Under our statutory scheme both county and city boards of education are bodies corporate. As such they consider matters and act only as a corporate body. Therefore, as to each individual member, board membership creates in itself no special entitlement to information where such information is not pertinent to matters being considered by the board. Further, as we have discussed in Question No. 1, employment applications of applicants for employment who have not been recommended for employment are not pertinent for consideration when the board is considering the appointment of new employees. Therefore, the members of the board are not, as such, entitled to review information on job applications obtained by a superintendent of education when the board is considering other persons recommended for employment by the board.

#### CONCLUSION

When a county or city board of education is considering the employment of persons recommended by the superintendent of education as required by law, the board members, as such, have no legal entitlement beyond that of the general public or of a private citizen to review the job applications, etc., of those applicants who have not been recommended by the superintendent for employment. Therefore, the superintendent is not required to provide information to the board on non-recommended applicants as a matter of course when he makes employment recommendations.

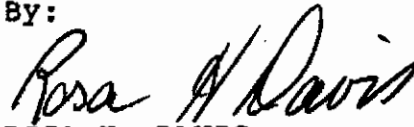
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I hope this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN  
Attorney General

By:

A handwritten signature in cursive script that reads "Rosa H. Davis". The signature is written in black ink and is positioned above the typed name of the signatory.

ROSA H. DAVIS  
Assistant Attorney General

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