

## The State of South Carolina



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December 7, 1987

The Honorable John W. Pettigrew, Jr.  
Member, South Carolina House  
of Representatives  
Post Office Box 338  
Edgefield, South Carolina 29824

Dear Representative Pettigrew:

You have requested the advice of this Office as to several matters concerning the Edgefield County School District. As you know, I have been assigned your questions concerning school taxation, and Senior Assistant Attorney General Treva Ashworth will address those questions concerning the election and terms of school trustees.

Your questions relate to whether the Legislature can alter the method of setting school tax millage in Edgefield County. Currently, under Act 1018, Acts and Joint Resolutions of South Carolina, 1968, the Edgefield School District Board of Trustees annually determines the millage to be levied.

Your first question is whether the Legislature could require that the Legislative Delegation approve the millage rate or whether such approval would violate the decision of the Supreme Court in Aiken County Board of Education v. Knotts, 262 S.E.2d 411 (S.C. 1980). In Knotts, the Court found that the Legislative Delegation's authority to approve school tax millage increases in Aiken County violated the separation of power restrictions of Art. I, §8 of the Constitution of South Carolina. Therefore, giving millage approval authority to the Edgefield Legislative Delegation would be constitutionally suspect under Knotts. See also, Ops. Atty. Gen., (March 18, 1987, September 18, 1986, and May 16, 1983).

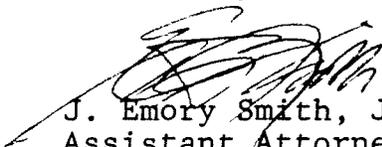
You have further asked whether the Legislature is limited in any way in determining the degree of fiscal responsibility given to a particular school district. Under §4-9-70, in which certain

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general provisions are made for setting school tax millage, the Legislature has indicated that a variety of different mechanisms may be used to determine the school tax millage including action by county councils or by the voters in referenda. See Spartanburg Sanitary School District v. City of Spartanburg, 283 S.E.2d 258 (1984). In particular, the General Assembly appears to have the authority to require the approval of the millage by county councils or to set a ceiling for the millage which could not be raised absent approval in referenda. Id. Therefore, the Legislature appears to have broad discretion in determining the fiscal autonomy and millage levying mechanisms for the various school district absent a specific constitutional problem such as that noted in Knotts or such as the giving of taxing authority to a non-elected body which was found to be unconstitutional in Crow v. McAlpine, 285 S.E.2d 355 (S.C. 1981). See also, Ops. Atty. Gen., (July 22, 1980). Of course, all possible constitutional questions cannot be anticipated without knowing the particular means for setting a school tax millage that will be chosen.

In conclusion, the Legislature appears to have broad authority to determine the fiscal autonomy of the Edgefield School District including giving millage approval authority to the County Council or by imposing a millage ceiling that can be increased only by the voters in referenda; however, granting such authority to the County Legislative Delegation would be constitutionally suspect. If you have any questions, please let me know.

Yours very truly,

  
J. Emory Smith, Jr.  
Assistant Attorney General

JESjr/srcj

REVIEWED AND APPROVED:

  
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