

The State of South Carolina



Opinion No 86-7
P32

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-3970

January 14, 1986

The Honorable Joyce C. Hearn
Member, House of Representatives
404C Blatt Building
Columbia, South Carolina 29211

Dear Representative Hearn:

You have asked us to advise you as to what authority, if any, Richland County Council possesses to investigate Richland School District I finances. We would advise that a court would probably conclude that County Council does possess certain limited investigative powers pursuant to its authority to levy taxes by setting the millage rate for the school district. We will set forth the limitations upon this authority below.

We are not aware of any general or local statute which expressly authorizes Richland County Council to investigate the finances of the school district. Indeed, while Act No. 140 of 1969 gives Richland County Council at least some of the powers of the old Richland County Board of Education, "a prior law appears to have limited the old County Board's jurisdiction to matters outside of District One except as to consolidation under § 59-17-50." Op. Atty. Gen., August 22, 1984. See also, § 21-3913 of the 1962 Code; Ops. Atty. Gen. (February 23, 1984). Accordingly, we have heretofore concluded that these statutes make it doubtful that County Council possesses authority with respect to the approval of the school district attorney. Moreover, § 4-9-70 of the Home Rule Act limits the power of county councils with respect to school districts generally. See, Moya v. Caughman, 265 S.C. 140, 217 S.E.2d 36, 37 (1975); Article XI, § 3 of the Constitution of South Carolina (1895).

However, Richland County Council is expressly authorized to levy taxes for School District One by setting the level of millage for the District. See, Act. No. 280, § 2, 1979.

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This section provides in pertinent part as follows:

Notwithstanding any other provision of law, no uniform countywide tax levy for school purposes shall be levied after the tax year 1978. Instead, the school tax levy ... for Richland County School Districts 1 and 2 shall be determined by the Richland County Council based on the requirements of the South Carolina Education Finance Act of 1977 and based on any other additional funding deemed necessary by the board or county council.

Mindful of this statute authorizing county council to exercise certain legislative authority over the school district, we would note that there exists case law concluding that a legislative body such as a county council possesses inherent authority to investigate matters within the scope of its legislative powers. It has been stated in this regard that

as a general rule, the legislature has the power to investigate any subject with respect to which it may desire information in aid of the proper discharge of its function to make or unmake written laws, or to perform any other act delegated to it.

81A C.J.S., States, § 56. In other words, it is a general principle of law that "the power to investigate is an essential corollary to the power to legislate." Id. Moreover, this rule is also applicable to local legislative bodies such as a city or county council which have been given extensive authority under Article VIII of the Constitution and the Home Rule Acts. See, § 4-9-10 et seq.; § 5-7-10 et seq. See also, 4 McQuillin, Municipal Corporations, § 13.05.

A useful summary of the purpose of the foregoing rule of law is contained in Dubois v. Gibbons, 118 N.E.2d 295, 306 (Ill. 1954). There it stated that

... [t]he power and authority of legislative bodies to conduct investigations through committees has been recognized by the courts and is now well established. Greenfield v. Russell, 292 Ill. 392, 127 N.E. 102, 9 A.L.R. 1334; Sinclair v. U.S., 279 U.S. 263, 49 S.Ct. 268, 73 L.Ed. 692; McGrain v. Daughterty, 273 U.S. 135, 71 L.Ed. 580. The

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power of a legislative body to make proper investigations is founded upon necessity. The very existence of a legislative body implies the power to investigate via committees of its members into those affairs with respect to which it may legislate or appropriate funds. The alternative is to suppose that legislation for the appropriation of funds, the levying of taxes and their collection, the creation of administrative and executive offices, and the enactment of regulations to protect the lives and the property of the people must all be enacted without previous investigation.... That the power to investigate is an essential and appropriate auxiliary to the legislative function was ... recognized by the Supreme Court of the United States in McGrain v. Daugherty, 273 U.S. 135 at page 174 ... where, after extensively reviewing decisions of the State courts upon this question, it was said: "We are of opinion that the power of inquiry - with process to enforce it - is an essential and appropriate auxiliary to the legislative function...." (emphasis added).

Numerous other authorities support this view. See, State ex rel. Holloway v. Rhodes, 35 N.E.2d 987 (Ohio 1940); Eggers v. Kenny, 104 A.2d 10, 16 (N.J. 1954); 73 Am.Jur.2d, States, § 54. And our own Supreme Court has recognized that the power to investigate is essential to the power to legislate. Ex Parte Parker, 74 S.C. 466, 470, 55 S.E. 122 (1906). See also, Op. Atty. Gen., September 12, 1973.

These authorities also recognize the inherent authority of a legislative body to procure records and papers and the attendance of witnesses by subpoena. As one authority has stated:

The inherent power of the legislature to conduct investigations in aid of prospective legislation and to secure other needed and proper information carries with it, in proper cases, power to require and compel the attendance of witnesses and the production of books and papers by means of legal process.

72 Am.Jur.2d, States, § 48.

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In our judgment, these basic principles would be applicable to County Council's legislative authority to levy taxes for School District One. Clearly, the power of taxation is a legislative function. 71 Am.Jur.2d, States and Local Taxation, § 72; 84 C.J.S., Taxation, § 7; Ellerbe v. David, 193 S.C. 332, 8 S.E.2d 518 (1940). And of course, the power to set the tax rate or the amount of the tax is likewise legislative in nature. 84 C.J.S., Taxation, § 349, 352. Courts have determined that the legislative body has the right to determine the amount levied commensurate with public needs. 84 C.J.S., Taxation, § 361. Thus, County Council would, in our view possess certain inherent authority to investigate as to what taxes should be levied for the school district consistent with public need.

However, caution is clearly advised in this instance. As mentioned earlier, we know of no statute expressly authorizing such investigation, whereas county council is expressly authorized to investigate in other instances. Moreover, as we mentioned earlier, the Home Rule Act generally limits the power of county council with respect to school district matters. In short, this is not the typical case where county council investigates its own employees, see, § 4-9-660, but instead could be investigating at least to some degree, the operation of a separate and autonomous political subdivision. Thus for these reasons, our conclusion is not free from doubt and caution must be urged. Moreover, the Richland County legislative delegation may wish to provide express legislative authority setting forth the scope and nature of this and other future investigations.

Moreover, there are other legal limitations which would come into play. As one authority has stated with regard to legislative investigations,

[a]n unlimited inquisition is never permissible and will not be countenanced. The investigative power must be used ... as a means to an end and not an end in itself.

Application of Tiene, 115 A.2d 543 (N.J. 1953). This would certainly be true where the principal authority which county council possesses vis a vis School District One is the taxing power. And as another authority has written:

But there are limitations on the legislative power of investigation.... The basis of the legislative power to investigate lies in the necessity of the legislature obtaining adequate information in order to legislate.... Thus, the first

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limitation on a legislative investigation is that it must be for a legislative purpose. The second limitation ... is the requirement that the information sought be relevant or pertinent to the inquiry made. If the inquiry be pertinent an answer may be required; if it be impertinent or irrelevant the witness may refuse to testify.

Dubois v. Gibbons, 118 N.E.2d, supra at 307. Also, it has been likewise stated:

The power of investigation, however, is not an unbridled one and must be circumscribed by reasonable limitations. And the fact that the general scope of the inquiry is authorized and permissible does not compel the conclusion that the investigatory body is free to inquire into or demand all forms of information, and validation of the broad subject matter under investigation does not necessarily carry with it automatic and wholesale validation of all individual questions, subpoenas and documentary demands.

72 Am.Jur.2d, States, § 49.

In summary then, we are not aware of any statute expressly authorizing Richland County Council to investigate Richland School District One finances. Moreover, there are general and local laws limiting Council's authority with regard to Richland School District One. However, a court would probably conclude that, because Richland County Council possesses the authority to levy taxes for the School District, that it does possess certain authority to conduct a reasonable investigation in order to carry out this statutory duty.

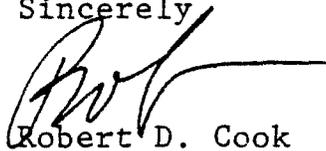
We caution again, however, that both legal authorities and public policy clearly place limitations upon the legislative power of investigation. The authorities cited above, unquestionably indicate that any investigation may not be lightly initiated or conducted arbitrarily. Clearly, procedural safeguards must be employed. 1/ These principles would be especially applicable where, as here, the Home Rule Act recognizes that a school district constitutes a separate and

1/ Richland County Council possesses an ordinance, 2-639 et seq. which appears to offer reasonable procedures.

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autonomous political subdivision. Finally, it must be stressed that the case law permits an investigation only within the strict scope of the legislative body's authority - in this instance, the determination of an appropriate tax levy for the district. Accordingly, in all instances any such investigation must bear a close relationship to the levy of taxes. Because of the absence of express statutory authority, where there may exist doubt in a particular area, restraint should be exercised.

Sincerely



Robert D. Cook
Executive Assistant for Opinions

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