

1981 WL 158219 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 3, 1981

**\*1 Re: Requested Opinion**

The Honorable Richard W. Riley  
Governor of the State of South Carolina  
Post Office Box 11450  
Columbia, South Carolina 29211

Dear Governor Riley:

You have requested an opinion as to the probable constitutionality of H.2488 (R-52), which has been enacted by the General Assembly and sent to you for your approval. H.2488 provides for the election of a board of trustees for Florence County School District Number One and provides for establishing the tax millage for the District. My initial review of the legislation caused me to scrutinize the bill in three separate areas.

First, I have reviewed the bill with regard to its various provisions requiring the election of a nine member board of school trustees for Florence School District No. 1. Insofar as the provisions of the bill involving election procedure are concerned, I find no reason to declare the legislation of suspect constitutionality. While the bill is not unconstitutional, it does deviate in several regards from general state election law.

Second, I have considered the effect of Article 3, § 34, Constitution of South Carolina, 1895, as revised. Even though the legislation is special in the sense that it applies to only one of South Carolina's ninety-two school districts and is a deviation from the general school law involving school trustees (§ 59-19-10, *et seq.*), the bill is not in contravention of the [constitution](#). [Article 3, § 34](#) does expressly prohibit a special law to incorporate a school district; however, the legislation in question here is not an attempt to incorporate Florence County School District No. 1. The legislation merely provides for the election of the board of school trustees and makes certain provisions for the establishment of the tax millage for the district. Education in South Carolina is a matter of primarily state concern, as specified at Article XI, § 3, Constitution of South Carolina, 1895, as revised. The Supreme Court in [Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975), indicated, without actually deciding the issue, that [Article 3, § 34](#) does not restrict the authority of the legislature pursuant to Article XI of the Constitution. This has been the consistent position of this office, as evidenced by continuing line of Attorney General's Opinions. See for example, Opinion No. 4399, Opinions of the Attorney General, July 20, 1976.

Third, I have considered the constitutional sufficiency of § 5 of the proposed Act. That section of the bill states in part, 'Vacancies on the board shall be filled by so many of the members of the House of Representatives and Senate elected from the district's wholly or in part within the bounds of school district number one of Florence County for the unexpired term.' A question can be raised whether allowing members of the General Assembly to fill a vacancy on a local school district board contravenes [Article 1, § 8 of the Constitution](#). That provision provides that legislative, executive, and judicial powers of state government shall be separate and distinct from each other. While the legislature has the authority to make law for the state, it does not also have the power to administer such laws. [Aiken County Board of Education v. Knotts](#), 212 S.E.2d 14 (S.Ct. S.C. 1980). The only direct authority I have found concerning this type matter is in [Walpole v. Wall](#), 153 S.C. 106, 150 S.E. 760 (1929), wherein the Court considered the constitutionality of the legislature appointing name trustees for a school district, stating:

**\*2** As to the fifteenth objection that in appointing the nine trustees named in the Act of 1929 for the newly created Bonneau High School District, the Legislature exercised an executive or administrative function; whereas its powers is limited to legislative action.

The power of the Legislature is always plenary; and the Constitution expressly clothes it with the power to appoint or authorize the appointment of school trustees. See § 6, Article XI, Const. 1895.

Walpole v. Wall might eliminate any concern here; however, Article XI, § 6 of the Constitution as it was in effect in 1929 is no longer a part of our Revised [Constitution](#). [Article XI, § 3](#) of the Revised Constitution, however, provides the General Assembly plenary powers in providing for public education in South Carolina. The current constitutional provision is most likely a sufficient basis upon which the General Assembly may exercise 'the power to appoint or authorize the appointment of school trustees'.

Therefore, I have found no basis upon which H.2488 would be subject to being declared unconstitutional by a court in this state.

With kindest regards,  
Sincerely,

Paul S. League  
Assistant Attorney General

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