

1980 WL 121193 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 24, 1980

*1 Honorable M. Ernest Nunnery
Representative
District No. 44
House of Representatives
State House
Post Office Box 11867
Columbia, South Carolina 29211

Dear Mr. Nunnery:

You have requested that this Office prepare an Opinion for you regarding the constitutionality of House Bill 3777. Specifically, you wish to know whether this bill violates constitutional prohibitions against special legislation. See Article III, Section 34, Constitution of South Carolina, 1895, and the amendments thereto. In my letter to you dated April 22, 1980, I stated that a preliminary review of this bill indicated no conflict between it and the Constitution.

The bill in question amends Section 1 of Part II of Act 252, Acts and Joint Resolutions of South Carolina, 1979, so as to add an elected chairman to the Chester County School Board of Trustees and provide for his term and election. Other portions of Section 1, Part II of Act 252, which are restated in the bill, provide for the election of the trustees.

South Carolina cases which have considered issues similar to that presented here indicate that the proposed amended version of Section 1 would be sustainable as a special provision in the general law. See [Moseley v. Welch](#), 209 S.C. 19, 39 S.E.2d 133 (1946); [State v. Huntley](#), 167 S.C. 476, 166 S.E. 637 (1932); [State v. Meares](#), 148 S.C. 118, 145 S.E. 695 (1928). In addition, while [Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975) did not decide the issue of whether an act pertaining to the election of the board of trustees of a county's school board violated Article III, Section 34, the opinion noted that cases indicated that Section 34 does not deal with matters specifically covered by Article XI which pertains to public education; however, [McElveen v. Stokes](#), 240 S.C. 1, 124 S.E.2d 592 (1962) stated that '. . . not even in school cases is the power of the General Assembly always broad enough to insure that an act pertaining to school matters is not in contravention of Article III, Section 34, Subsection IX. See [[Kearse v. Lancaster](#), 172 S.C. 59, 172 S.E. 767 (1934)].' 124 S.E.2d at 596.

House Bill 3777 appears to be consistent with case law concerning the application of Article III, Section 34 to school matters. If I can be of further assistance, please do not hesitate to contact me.

Yours very truly,

J. Emory Smith, Jr.
State Attorney

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