

1979 WL 42838 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 5, 1979

*1 Honorable Rembert C. Dennis
Chairman
Senate Finance Committee
State House
Columbia, South Carolina

Dear Senator Dennis:

You have requested opinions from my Office relating to the respective roles of the county council (council) and the legislative delegation (delegation) vis a vis the local school district board of trustees (board), and my opinions are as follows:

1. In the area of public education, the council has no new powers by virtue of the provisions of Act No. 283 of 1975, the 'home rule' legislation. See, § 4-9-70, [CODE OF LAWS OF SOUTH CAROLINA](#), 1976; see also, [Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975). Thus, the delegation can introduce legislation pertaining to only one county if that legislation deals with the functioning of a school district or any other respect of public education without running afoul of the constitutional prohibition against laws for a specific county. See, e.g., 59 STAT. 1072 (1975).

2. Pursuant to [Section 4-9-70 of the 1976 Code](#), the council can establish by ordinance the method for setting the school tax millage except in those counties where the board or the county board of education had that authority at the time 'home rule' became effective in a particular county and except in those counties where the General Assembly retained such authority as of January 1, 1974. As to the power of the council or the delegation to approve a school district's budget, I am enclosing a copy of an earlier opinion rendered by my Office which concludes that in those counties where the General Assembly retained the authority to set the school tax millage on January 1, 1974, the council has no authority to require the submission of a school district budget to it for approval. On the other hand, since the General Assembly has the authority to set the millage in those counties, it also has the authority to approve the budgets of the school districts therein. See, e.g., 59 STAT. 2368 (1976). Where the board or the county board of education had the power to set the school tax millage when 'home rule' became effective, the council in those counties most probably does not have the authority to do anything other than accept the proposed school district budget and authorize that the requested school tax millage be levied and collected.

3. In response to your final inquiry, the General Assembly can change the method of selection of board members by legislation as it did in the legislation which was upheld in [Moye v. Caughman](#), *supra*. Included within this authority is the power to specify that board members be appointed by the delegation, but, most probably, not by the council without amending certain language contained in [Section 4-9-170, CODE OF LAWS OF SOUTH CAROLINA](#), 1976.

With kind regards,

Daniel R. McLeod
Attorney General

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