

1977 WL 37453 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 31, 1977

*1 Mr. Ralph E. Watkins, Jr.
Newberry County Public Schools
P. O. Box 116
Newberry, South Carolina 29108

Dear Mr. Watkins:

You have requested an opinion from this Office as to whether or not the board of trustees of the Newberry County School District [District] will be able to issue general obligation bonds of the District in an amount not exceeding the current constitutional limitation of thirty (30) percent without a referendum after November 30, 1977, the effective date of new Article X of the South Carolina Constitution of 1895, as amended. While the matter is not free from doubt, my opinion is that even though the District will be authorized to issue bonds up to the current thirty (30) percent limit for a period of five (5) years after November 30, 1977, pursuant to the provisions of Section 15(6) of new Article X, it will also have to continue to comply with the election (and other) requirements of Sections 59-71-10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976 [the 'School Bond Act'], until and unless legislation is enacted repealing those requirements or excepting the District therefrom.

The matter is not free from doubt because Section 15(6) of new Article X provides in part that a school district may incur bonded debt up to its current constitutional limit for a period of five (5) years after November 30, 1977, 'upon such terms and conditions as the General Assembly may have heretofore or may hereafter prescribe' [emphasis added]. Act No. 125 of 1977, which was enacted after the provisions of new Article X were submitted to and approved by the people but before the effective ratification date thereof, does provide in part that all laws relating to the incurring of bonded debt by school districts are to continue in full force and effect after that ratification date except that, inter alia:

If an election be prescribed by the provisions of such law, but is not required by the provisions of new Article X, then in every such instance, no election need be held . . . Act No. 125 of 1977, § 6.2.

In my opinion, however, this provision contemplates the prospective nullification of any election requirement imposed by statute once the eight (8) percent limit is in effect, i.e., after November 30, 1982, and does not effect an immediate repeal of the election requirement presently in the School Bond Act. This is so because, while an election is required by the provisions of new Article X after the eight (8%) percent limit has been reached, that eight (8%) percent limit does not take effect until after November 30, 1982. In other words, I think that the language hereinabove quoted means that, once the eight (8%) percent limit is in effect, if an election is required by statutory provisions (such as the School Bond Act) but is not required by the provisions of new Article X (and it will not be required until the eight (8%) percent limit has been reached), then the statutory requirement can be ignored.

*2 You have also inquired as to whether or not the District can, after November 30, 1977, incur bonded debt in excess of thirty (30%) percent if a referendum is first held and a majority of the school district electors voting therein approve it. My opinion is that it will be so authorized by the provisions of new Article X. See, S.C.CONST. art. X, §§ (5) and (6).

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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