

1976 WL 30763 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 8, 1976

*1 Honorable Charles L. Griffin, III
Member
House of Representatives
State House
Columbia, South Carolina

Dear Sir:

A bill is pending in the General Assembly which, if enacted, would, among other things, provide three alternate forms of school district organization and provide for the 'fiscal independence of all school districts' in this State. A board of trustees that elects to operate under Plan No. 1 will possess the express authority 'to prepare and approve the annual budget' and to 'determine the local tax necessary to implement the annual budget.' You inquire as to whether or not a local school board which elects to operate under either Plan No. 2 or Plan No. 3 would possess similar authority since neither plan expressly confers such authority upon a local board.

Plan No. 2, unlike Plan No. 1, provides for a county board of education which shall have, in addition to other powers, 'fiscal authority to approve the total school budget amount to be raised locally' and 'authority to appoint the local school district board of trustees, except in cases where the people of the district choose . . . to elect board members.' The board of trustees, under Plan No. 2, is to have 'authority and responsibility to provide for and operate all phases of school programs in the district.' In our view, a board of trustees which adopts Plan No. 2 will possess, pursuant to the broad authority conferred upon it, the implied authority to prepare the annual budget and to determine the levy necessary for its implementation; but the budget will be subject to the approval by the county board, which shall also have, it should be noted, the authority to establish an equalization levy among the districts in the county and the authority to provide for an equalization distribution plan. The preparation of the budget and the determination of the proper levy to be made to carry it out are, we think, 'phases' of a school district's program. One might say they are the sine qua non thereof.

Governance Plan No. 3 simply provides in part as follows:

Under Plan No. 3 any district board may continue to operate under the organization plan in the area of its jurisdiction existing on the effective date of this act if:

(a) the board of trustees or board of education has fiscal independence from any other local government entity.

The term 'fiscal independence', unfortunately, is not defined by the proposed act. Presumably by that term, the bill's authors mean 'any board which possesses the authority to prepare and approve its own annual budget for the operation of the district and the authority to determine the local tax levy necessary to implement the annual budget.' If, then, the term is so defined any board which may properly operate under Plan No. 3 necessarily would possess impliedly the budget and tax powers possessed expressly by a board that is to operate under Plan No. 1.

You inquire further as to whether or not 'a school board which presently does not have 'fiscal autonomy'' (and by that we presume you mean that it does not have the power to prepare and approve its own annual budget and the power

to determine the necessary levy) can 'avoid the 'fiscal autonomy' requirements of the bill by changing its membership composition from all-elected to majority-appointed.' We do not see how. Every school district must, within twelve months of the effective date of the proposed act, adopt one of the three plans. There can be no other plan chosen. If the board is to operate under Plan No. 1, it will possess express budget and tax powers; if the board is to operate under Plan No. 3, it will necessarily possess such powers or it simply will not be able to validly operate under that plan; and if a board is to operate under Plan No. 2, it will possess the power to prepare the annual budget, subject to the approval of the county board, and will possess the power to determine the tax levy necessary to implement it. The county board will, under Plan No. 2, possess the authority to establish an equalization levy.

*2 Should there be serious disagreement with the conclusions heretofore expressed by us concerning the proposed legislation, we would respectfully suggest that amendments thereto be made so that the bill, when it finally becomes law, might expressly reflect that which is actually intended.

Best wishes,

C. Tolbert Goolsby, Jr.

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