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HENRY MCMASTER
ATTORNEY GENERAL

October 12, 2006

The Honorable Michael A. Pitts
Member, House of Representatives
372 Bucks Point Road
Laurens, South Carolina 39360

Dear Representative Pitts:

We received your letter concerning limitations on the amount of bonded indebtedness school districts may incur. In your letter, you state:

> There have been a great number of school bonds authorized in South Carolina recently. I believe these to be outside of the intent of laws passed by the General Assembly. My concern is that they may exceed the bonding limits according to South Carolina law and, in most cases, are being authorized without referendum.
>
> I am particularly concerned about Greenwood School District 50, which is about to authorize approximately $150 million in school bonds while the district has a total assessed value of $153 million. My question is the legality of this action and does it comply with the intent of the laws as written?

Law/Analysis

Article X, section 15 of the South Carolina Constitution (Supp. 2005) affords school districts the power to issue bonds. Subsection (1) of this provision states: "The school districts of the State shall have the power to incur general obligation debt only in such manner and upon such terms and conditions as the General Assembly shall prescribe by law within the limitations set forth in this section." S.C. Const. Art. X, § 15(1). Subsection (6) of this constitutional provision limits the amount of general obligation debt a school district may incur to eight percent of the assessed value of all taxable property within the school district. Id. Art. X, § 15(6). Despite this restriction, subsection (3) of section 15 allows a school district to exceed this limitation upon the majority vote of all qualified electors within the school district. Id. Art. X, § 15(5). This provision provides:

Request Letter

> If the general obligation debt be authorized by a majority vote of the qualified electors of the school district voting in a referendum authorized by law, there shall be no conditions or restrictions limiting the incurring of such indebtedness except:
>
> (a) those restrictions and limitations imposed in the authorization to incur such indebtedness;
>
> (b) such general obligation debt shall be issued within five years of the date of such referendum; and
>
> (c) the provisions of subsection (3) hereof.

Id. (emphasis added).

To generally to answer your question, in order for a school district to issue bonded indebtedness in excess of the eight percent limitation, the school district must hold a referendum. This Office is not in a position to investigate and determine whether or not the Greenwood School District 50 plans to issue school bonds in excess of the constitutional debt limitation and thus, is required to conduct a referendum approving such action. Op. S.C. Atty. Gen., July 19, 2006 (stating this Office does not have the authority of a court to investigate and determine factual issues). Furthermore, as we noted in a prior opinion of this Office concerning limitations on bonded indebtedness, "this Office generally defers to the bond attorneys due to their familiarity with the law relative to issuance of bonds . . . ." Op. S.C. Atty. Gen., August 28, 1987. Thus, we assume the bond attorneys involved have considered whether a referendum is required. Nonetheless, based on the information provided in your letter, we caution that should Greenwood School District 50 issue bonds in excess of the eight percent debt limitation, a majority of the qualified electors of that school district must authorize such an issuance.

Very truly yours,

Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General

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HENRY MCMASTER
ATTORNEY GENERAL

October 13, 2006

The Honorable Olin R. Phillips
Member, House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Phillips:

We understand you seek an opinion of this Office on behalf of the Joint Committee to Screen Candidates for Boards of Trustees of State Colleges and Universities concerning dual office holding. Specifically, you ask:

> If an individual serves on the Limestone College Board of Trustees and is elected by the General Assembly to the South Carolina State University Board of Trustees, would that be a violation of the dual office holding clause of the constitution?

In our review of this issue, we discovered an opinion of this Office issued in March 2005 addressing your question, a copy of which we enclosed. Op. S.C. Atty. Gen., March 24, 2005. In that opinion, we discussed whether an individual serving on the Limestone College Board of Trustees who was elected by the General Assembly to the South Carolina State University Board of Trustees would be in violation of the dual office holding prohibition contained in article XVII, section 1A of the South Carolina Constitution. Id. Although this Office consistently has held a position on the South Carolina State University Board of Trustees is an office, we determined a position on the Limestone College Board of Trustees is not an office. Id. Thus, we concluded an individual holding both positions is not in violation of the dual office holding prohibition. Id. As we stated on numerous occasions, this Office "will not overrule our prior opinions unless clearly erroneous or unless applicable law has changed." Op. S.C. Atty. Gen., September 8, 2005. Finding

Request Letter

no changes in the law and regarding our 2005 opinion as not erroneous, we believe an individual's simultaneous service in these positions would not violate the dual office holding prohibition.

Very truly yours,

Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General