HENRY MCMASTER
ATTORNEY GENERAL

May 25, 2010

The Honorable Murrell Smith
SC House of Representatives, Dist. No. 67
PO Box 580
Sumter, SC 29151

Dear Representative Smith:

We received your letter requesting an opinion of this Office concerning extending the terms of Board of Trustees. You asked us to opine "on the constitutionality of Senate Bill1372 as it relates to extending terms of Board of Trustees for Sumter School Districts 2 & 17." As a way of background, you explained that elections for the School District Board Members for 2010 are being cancelled due to the consolidation of the school districts on June 30, 2011. This opinion will address prior opinions, legislative intent, relevant statutes and caselaw to determine the constitutionality of the General Assembly extending the terms of the Board of Trustees for Sumter School Districts 2 and 17.

Law/Analysis

Senate Bill 1372 proposes the following:

> SECTION 1.
> (A) Effective July 1, 2011, Sumter County shall consist of one school district to be known as the Sumter School District."
> (B) The present School Districts 2 and 17 of the county must be abolished on July 1, 2011, and the powers and duties of the respective boards of trustees of each district devolved upon the board of trustees for the school district except as established in this act. Terms of members of the present District 2 and 17 boards that are set to expire in 2010 must be extended to June 30, 2011. . . .
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> SECTION 8.
> (A) The present School Districts 2 and 17 of Sumter County are abolished on July 1, 2011, at which time the school district must be established as provided in this act. The terms of all members of the boards of trustees of the two present school districts of the county expire on this date. However, the members of the board of trustees of

> the school district elected at the 2010 nonpartisan election shall take office one week following certification of their elections as provided in Section 59-19-315 of the 1976 Code. From this date and until July 1, 2011, the board may organize, begin planning for the changeover to the district, enter into contracts to effectuate these purposes, and perform other related matters pertaining to it, except that the responsibility and authority to manage the schools of the county rests solely with the individual boards for the two present districts until July 1, 2011, and the board may not interfere with this authority.

Session 118, Senate Bill 1372 (2009 - 10).

Even though Senate Bill 1372 is not yet codified, it is important to note that any statute enacted by the General Assembly carries a heavy presumption of constitutionality. This office has often stated that "a legislative act is presumed valid as enacted unless and until a court declares it invalid." Op. S.C. Atty. Gen., October 19, 2007. An act will not be considered void unless it unconstitutionality is clear beyond any reasonable doubt. Id. (Citing Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland Co., 190 S.C. 270, 2 S.E.2d 779 (1939)). In fact, our Supreme Court has repeatedly recognized that the "powers of the General Assembly are plenary and not acquired from the constitution and it may enact such legislation as is not expressly or by clear implication prohibited by the constitution." State ex rel. Thompson v. Seigler, 230 S.C. 115, 120, 94 S.E.2d 231, 233 (1956).

There is no apparent prohibition because the South Carolina Constitution actually grants such authority to the General Assembly in Article XI, § 3:

> The General Assembly shall provide for the maintenance and support of a support system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.

SC Const. Art. XI, § 3. Moreover, as our Supreme Court earlier recognized in Miller v. Farr, 243 S.C. 342, 349, 1335 S.E.2d 838, 842 (1963), "[i]t is clear that under our Constitution school districts have no permanent existence in as much as the General Assembly has plenary power to create new school districts or to consolidate existing school districts with other school districts."

Since Miller was decided, the Constitution was amended to authorize Home Rule. As part of the Home Rule Amendment, Article VIII, Section 7 provides that "no laws for a specific county shall be enacted" by the General Assembly. SC Const. Art. VIII, § 7.

The South Carolina Supreme Court explained the history of the Home Rule Doctrine in Hospitality Ass'n of South Carolina, Inc. v. County of Charleston as follows:

> For generations, legislative delegations of the General Assembly controlled virtually every aspect of local government. Relinquishment of this control effectively began in April of 1966, when the General Assembly created a Committee to study the South Carolina Constitution and appointed then Senator John C. West as chairman. The major task assigned to the West Committee was to develop and recommend amendments to the Constitution that would eliminate archaic provisions and "strengthen it in such other areas, so that it [would] provide a workable framework with proper safeguards for sound State, County and local governments."
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> In June of 1969, after three years of numerous hearings and conferences, the West Committee submitted its Final Report to the Governor and General Assembly. In the Report, the Committee unanimously recommended amendments to the Constitution that would place the control and management of county and municipal affairs in the hands of duly elected local officials.
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> Following three years of legislative debate on the Report, the General Assembly placed upon the November 1972 general election ballot for referendum vote an Amendment of Article VIII of the Constitution. See Act No. 1631, 1972 S.C.Acts 3184. Acting upon a favorable vote of the people, the General Assembly, on March 7, 1973, ratified the Amendment. See Act No. 63, 1973 S.C.Acts 67.
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> As ratified, new Article VIII directed the General Assembly to implement what was popularly referred to as "home rule" by establishing the structure, organization, powers, duties, functions, and responsibilities of local governments by general law. S.C. Const. art. VIII, §§ 7 and 9. In addition, new Article VIII mandated a liberal rule of construction regarding any constitutional provisions or laws concerning local government. S.C. Const. art. VIII, § 17.

Hospitality Ass'n of South Carolina, Inc. v. County of Charleston, 320 S.C. 219, 224-225, 464 S.E.2d 113, 117 (1995).

In an opinion of this Office dated October 19, 2007 we harmonized the two concepts as follows:

> Our Supreme Court has attempted to reconcile these various provisions of the State Constitution in Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975) and subsequent decisions. In Moye, the Court upheld a statute which changed the method of electing the boards of trustees of school boards for Lexington County against a challenge based upon Art. VIII, § 7's prohibition against laws for a specific county. The Court concluded as follows:
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> > [t]he contrast between Article XI and Article VIII should be obvious. In Article XI the General Assembly is charged with the duty to provide for a system of public education, whereas in Article VIII the General Assembly is required to confer powers

> upon the counties so that they may carry out local functions. Moreover a reading of Article XI, which deals specifically with public education as a whole, . . . in light of the historical background of public education in this State, and attempting to harmonize the entire Article and extract the impact of each section, it is clear that the provisions of Article VIII, which deal with local government, have no application to the matter currently before us. 265 S.C. at 143-144, 217 S.E.2d 36, 38.

And, in Bradley v. Cherokee School District No. One of Cherokee County, 322 S.C. 181, 470 S.E.2d 570 (1996) the Supreme Court reaffirmed this reasoning in the context of a challenge made pursuant to Article III, § 34's prohibition against the enactment of special legislation.

Op. S.C. Atty. Gen., October 19, 2007.

The South Carolina Supreme Court held in Walpole v. Wall that "[s]chool trustees are legislative, not constitutional, officers whose terms may be ended or extended at the will of the Legislature." Walpole, 153 S.C.106, 149 S.E. 760, 764 (1929).[1] South Carolina Jurisprudence explains that the "General Assembly may modify the term of an office if no constitutional provision is contravened." 8 S.C. Jur. Public Officers and Public Employees § 31 (citing Ward v. Waters, 184 S.C. 353, 192 S.E. 410 (1937); Ops. S.C. Atty. Gen., No. 137 (1937); No. 138 (1927).)

Conclusion

It is our opinion that extending the terms of the Board of Trustees for Sumter School Districts 2 & 17 is constitutional. The right to vote is a fundamental right, but the right to have an election is not. It is axiomatic that the General Assembly may consolidate school districts, Miller v. Farr, supra and neither Article III, § 34 (special laws prohibited where general law may be made applicable) or Article VIII (Home Rule) impedes such action because Article XI provides the Legislature with broad power to regulate public education. Therefore, it is not problematic that the elections of School District Board Members for 2010 are cancelled due to the consolidation of the school districts on

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[1] See also, Lee v. Clark, 224 S.C. 138, 77 S.E.2d 485 (1953). The Supreme Court explained in Lee that notwithstanding the provisions of the South Carolina Constitution, Art 2, § 2, and Art 1, § 10, that every qualified elector shall be eligible for public office, it was intended by this section that the General Assembly should be vested with the power to prescribe other qualifications for the office of school trustee. Lee v. Clark, 224 S.C. 138 (1953). The qualifications fixed for the office of school trustee may not be arbitrary, they must be reasonable and based upon substantial grounds which are natural and inherent in the subject matter of the legislation, and the rights shall belong equally to each member of the class created by such qualifications. Id. The fact that the General Assembly is able to prescribe qualifications indicates that the General Assembly has authority to extend the terms.

June 30, 2011 since such a result is necessary and implicitly authorized under the authority given to the General Assembly when maintaining schools.

Sincerely,

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REVIEWED AND APPROVED BY:

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