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The State of South Carolina



Office of the Attorney General

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August 2, 1993

The Honorable Robert W. Hayes, Jr.
Senator, York County
504 Gressette Building
Columbia, SC 29202

Dear Senator Hayes:

You have advised that boundaries for school district attendance lines, election of school district trustees, and taxes for school purposes in York County are not consistent with each other. The school districts requested that the Delegation introduce legislation to remedy the situation in June, too late for this legislative year. The school districts may wish to implement amended attendance lines at the beginning of the upcoming school year. You have requested advice as to whether local legislation is needed in order to implement a change in school attendance lines in the four school districts in York County.

If you are talking about the boundary lines between the school districts, those lines appear to have been established by statute for, at least, three of the four districts. Act No. 825, 1978 S.C. Acts 2507 (Clover School District No. 2); § 21-4351, 1962 Code of Laws (York School District No. 1); and § 21-4381, 1962 Code of Laws (Fort Mill School District No. 4). If those boundary lines would be changed at all, procedures set forth in S.C. Code Ann. § 59-17-20 (1990) (copy enclosed) would need to be followed. See Ops. Att'y Gen. April 9, 1987, and November 30, 1981. This statute gives several different options for alteration of district lines, but the alternative calling for the approval of the legislative delegation under ¶ 2(a) of that statute may be of questionable constitutionality. Ops. Att'y Gen. June 8, 1981. If your question is addressed to attendance lines within individual districts that do not affect the boundary lines between the school districts (i.e., merely determining which school within a district a student would attend), then, in the absence of any local legislation for York County to the contrary, this matter would be addressed by § 59-19-90(9) which authorizes a school district board of trustees to "...determine the school within its district in which any pupil shall enroll...." See Ops. Att'y Gen. June 3, 1988.


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I also note that, if any of these school districts are operating under a school desegregation plan approved by a court or the federal Office of Civil Rights, the plan should be carefully reviewed to determine whether these changes would be consistent with it or otherwise permissible. In making any of these decisions, a school district should carefully consult with its local lawyers who are familiar with the special facts concerning these matters.

If a legislative change appears to be necessary or appropriate as to any of these matters, as where the boundaries previously established by statute must be changed, school districts should consider postponing any action until such time as the General Assembly can act. In considering any legislation, I note also, for your information, that in Horry County v. Horry County Higher Education Commission, ___ S.C. ___, 412 S.E.2d 421 (1991), the Supreme Court made clear that education is not exempt from special legislation restrictions of the Constitution although the Court recognized the broad legislative power of the General Assembly in dealing with education under art. XI of the Constitution. See Ops. Att'y Gen. June 16, 1993. I express no opinion herein as to whether any local legislation on this subject would be consistent with Horry County, but I refer you to the enclosed June 16, 1993, opinion of this Office for some guidance as to that matter.

I hope that the above information will be of some assistance to you. If you have any questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Deputy Attorney General

JESjr:ppw
Enclosures

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