

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211-1549
TELEPHONE: 803-734-3636
FACSIMILE: 803-253-6283

March 14, 1994

The Honorable F. G. Delleney, Jr.
House of Representatives, District 43
532-C Blatt Building
Columbia, SC 29211

Dear Representative Delleney:

You have requested the opinion of this Office as to whether and how a referendum could be placed on the ballot which would, if passed, require the Chester County School District's budget to be subject to the approval of the Chester County Council. The current provisions for levying taxes in that School District are set forth in Act No. 1005, 1970 S.C. Acts 2290, a copy of which is enclosed for your reference. No opinion is expressed herein as to the provisions for taxation in Act 1005.

Because no current statutory provisions appear to authorize a referendum such as the one about which you have inquired, legislation would need to be passed by the General Assembly to authorize the referendum if it is to be held. Ops. Att'y Gen. December 20, 1991, and February 13, 1991. Such legislation, if passed, would carry a presumption of constitutionality which would be followed by a Court unless the unconstitutionality of the law were found to be beyond a reasonable doubt. Ops. Att'y Gen. June 16, 1993. Nevertheless, if the law applied only to Chester County, it would carry some risk of being found to be unconstitutional under S. C. Const. art. III, § 34, which imposes restrictions on the passage of special legislation. Horry County v. Horry County Higher Education Commission, 306 S.C. 416, 412 S.E.2d 421 (1991).

In Horry County, the Supreme Court recognized the broad legislative power of the General Assembly in dealing with education under art. XI of the Constitution, but the court made clear that education is not exempt from special legislation restrictions of the Constitution. The court struck down legislation for the Horry County Higher Education Commission under art. III § 34 because it found that a general law could be fashioned to provide ad valorem property tax funding for all colleges and universities and that the record was "...devoid of any peculiar local conditions which require special treatment for Coastal Carolina" as to those taxes; however, Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133, 138 (1946),

The Honorable F. G. Delleney, Jr.
March 14, 1994
Page 2

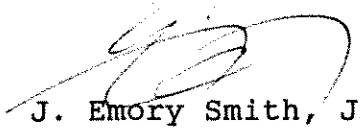
recognized considerations that might allow the proposed referendum statute to avoid unconstitutionality under art. III § 34.

Moseley stated that "[i]t is exceedingly doubtful whether a general law, uniform in operation throughout the state, regulating the measure of aid to be given by the counties to the districts or the extent of control which should be vested in the county boards of education, could be made applicable." Moreover, Moseley quoted the special referee in that case who held that the numerous special legislation provisions for the fiscal affairs of the schools and the counties of this State was "...at least indicative of a consistent legislative opinion that conditions in the various counties are such as to preclude uniformity of treatment in relation to the administration of school affairs." Id. According to the court, that conclusion of the General Assembly was "entitled to much respect and in doubtful cases should be followed." Id. Although certain general laws do exist as to school taxation (see e.g. § 4-9-70 (1986)), myriad local laws exist on the subject of school taxation. See generally Title 21, Code of Laws of South Carolina, 1962, as amended. A court might uphold the proposed statute on the basis of the above presumption and the language quoted from Moseley. See also Horry County, art. X § 34 and Gillespie v. Pickens County, 197 S.C. 217, 14 S.E.2d 900 (1941).

In conclusion, the only valid means of holding a referendum on the proposed subject would be by passage of statutory authorization by the General Assembly. Although the conclusion of this Office is that a special statute for Chester County on this subject would most probably be found to be constitutional, the Horry County decision does indicate that proposed statute carries some risk of being found unconstitutional if a court were to conclude that a general law could be fashioned on its subject and that no peculiar local conditions required special treatment for the district.

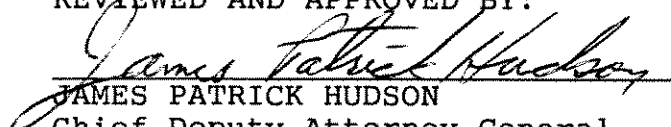
If you have any questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Deputy Attorney General

JESjr:ppw

REVIEWED AND APPROVED BY:


JAMES PATRICK HUDSON
Chief Deputy Attorney General


ROBERT D. COOK
Executive Assistant for Opinions