



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 20, 1995

W. D. Hucks, Ed.D., Superintendent
School District of Pickens County
1348 Griffin Mill Road
Easley, South Carolina 29640

RE: Informal Opinion

Dear Dr. Hucks:

By your letter of December 1, 1995, to Attorney General Condon, you have sought an opinion as to the possibility of establishing a "special tax district" within the School District of Pickens County for purposes of capital improvements. For example, some of the constituents in the Easley area are interested in exploring this approach to funding a new high school instead of renovating the current building as is currently planned by the district.

As discussed more fully below, I am not aware of any presently existing statutory or constitutional authority which would permit this type of district to be created within a district. I am of the opinion that an act of the General Assembly would be necessary to authorize the creation of such a district.

The starting point for the assessment and collection of taxes in political subdivisions of this State is S.C. Const. Art. X, §6, which provides in the first paragraph:

The General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State. Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes; provided, that on properties located in an area receiving special benefits from the taxes collected, special levies may be permitted by general law applicable to the same type of

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political subdivision throughout the State, and the General Assembly shall specify the precise condition under which such special levies shall be assessed. [Emphasis added.]

From this constitutional provision, it appears that a general law must be adopted by the General Assembly to permit special levies to be placed on property which receives special benefits; I am not aware of any such law which has been adopted applicable to school districts. (By way of contrast, I observe that S.C. Code Ann. §4-9-30(5) permits a county to create special tax districts and assess taxes or uniform service charges according to the level of governmental services provided. This statute is not applicable to school districts, however.)

Similarly, as to bonded indebtedness of school districts, S.C. Const. Art. X, §15 provides in relevant part:

(1) 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.

(2) General obligation debt shall mean any indebtedness of the school district which shall be secured in whole or in part by a pledge of its full faith, credit and taxing power.

....

Again, I am not aware of a law which would prescribe the terms and conditions under which only part of a school district could incur general obligation indebtedness.

A statutory scheme exists by which a school district may levy additional taxes, in S.C. Code Ann. §59-73-10 et seq. (1976, revised 1990). Those statutes do not contain provisions which would allow a part of a school district to be taxed at a level different from other parts of the school district. In addition, such authority could not be exercised by a county council on behalf of a school district, by virtue of S.C. Code Ann. §4-9-70 ("The provisions of this chapter [the Home Rule Act] shall not be construed to devolve any additional powers upon county councils with regard to public school education...").

I would further advise that if such legislation should be considered and adopted by the General Assembly to be able to create a special tax district within a school district, such should most probably be done by general law rather than by a law specifically for the School District of Pickens County to avoid constitutional difficulty. In the decision in Horry County v. Horry County Higher Education Commission, 306 S.C. 416, 412

S.E.2d 421 (1991), the South Carolina Supreme Court struck down as unconstitutional an act which provided for the levy and disbursement of ad valorem taxes for the benefit of the Horry County Higher Education Commission and the Coastal Carolina campus of the University of South Carolina. The court stated that the legislature has broad legislative power with respect to public education by virtue of Article XI of the South Carolina Constitution, but that acts relative to education are nevertheless subject to Art. III, §34(IX), which prohibits the enactment of a special law where a general law may be made applicable. The court stated:

This provision not only limits special legislation where existing general law is already applicable, but also where it is possible to create general law which would be applicable. [Cites omitted.]

Article III, §34(IX), however, does not prohibit all special legislation.

The language of the Constitution which prohibits a special law where a general law can be made applicable, plainly implies that there are or may be cases where a special Act will best meet the exigencies of a particular case, and in no wise be promotive of those evils which result from a general and indiscriminate resort to local and special legislation. There must, however, be a substantial distinction having reference to the subject matter of the proposed legislation, between the objects or places embraced in such legislation and the objects and places excluded. The marks of distinction upon which the classification is founded must be such, in the nature of things, as will in some reasonable degree, at least, account for or justify the restriction of the legislation.

Duke Power Co. [v. South Carolina Public Service Commission], 284 S.C. at 90, 326 S.E.(2d) at 400-401 (1985) [quoting Shillito v. City of Spartanburg, 214 S.C. 11, 20, 51 S.E.(2d) 95, 98 (1948)]. In other words, the General Assembly must have a "logical basis and sound reason" for resorting to special legislation. Gillespie v. Pickens County, 197 S.C. 217, 14 S.E.(2d) 900 (1941).

Horry County, 301 S.C. at 418-419, 412 S.E.2d at 423. Thus, consideration should probably be given to the adoption of a law general in form rather than one specifically for your school district to avoid constitutional problems similar to those in the Horry County decision.

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Based on the foregoing, I am of the opinion that an act of the General Assembly would be necessary to be able to tax a portion of a school district at a level differently from other portions of the school district, as there does not appear to be any statutory authorization currently in existence which would permit such a practice.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it has satisfactorily responded to your inquiry and that you will advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General