

The State of South Carolina



Office of the Attorney General

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January 17, 1995

The Honorable L. Morgan Martin
Chairman, Horry County Legislative Delegation
416-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Martin:

By your letter of December 5, 1994, to Attorney General Condon, you sought the opinion of this Office as to the constitutionality of the Horry County Legislative Delegation's approval over the annual budget of the Horry County School District.

The approval authority referred to was established pursuant to Act No. 239, 1983 Acts and Joint Resolutions, and predecessor statutes. Section 1 of Act No. 239 of 1983 provides in relevant part:

... The county board of education shall prepare a budget based on the budgets submitted by the trustees, superintendents, or principals and shall determine the necessary millage for the operation of schools for the next succeeding school year. This budget shall be submitted to the Senator and House members of Horry County on or before June first of each year. The Senator and the House members shall instruct the county auditor to levy the millage which in their discretion is necessary for school purposes on or before August first.

This act became effective upon approval by the Governor on May 12, 1983.

This Office examined the predecessor statute to section 1 of Act No. 239 by an opinion dated May 16, 1983, a copy of which is enclosed herewith. The predecessor statute is quoted therein and differs from the present statute in that the present statute

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removed a 58-mill limitation on the levy of millage and changed two dates by which certain actions were necessary; the substantive matters remain unchanged. That opinion examined the statute in light of Gunter v. Blanton, 259 S.C. 436, 192 S.E.2d 473 (1972) and Aiken County Bd. of Education v. Knotts, 274 S.C. 144, 262 S.E.2d 14 (1980), as quoted in the opinion and concluded that "the constitutionality of the provisions regarding Horry County would be highly questionable. However, only a court of competent jurisdiction could hold these provisions to be unconstitutional."

We observe that Gunter was cited as authority in Knotts and that both decisions still appear to be good law as neither have been overruled or their validity questioned. Subsequent (and prior) to the opinion of May 16, 1983, this Office has opined that legislative delegations' approval of similar millage would likely be constitutionally suspect as violative of the separation of powers doctrine in opinions dated May 8, 1991; December 2, 1987; December 7, 1987; September 26, 1983; September 9, 1986; and September 18, 1986.

Based on the foregoing, it is the opinion of this Office that the opinion of May 16, 1983 still reflects the current state of the law as to the issue of separation of power which arises when a legislative delegation approves the millage to be levied on behalf of a school district. Thus, we would conclude that section 1 of Act No. 239 of 1983 is of doubtful constitutionality, as such relates to the Delegation's authority to direct the County Auditor to levy the millage which, in the Delegation's direction, would be necessary for school purposes.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Zeb C. Williams, III
Zeb C. Williams, III
Deputy Attorney General