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February 13, 1991

The Honorable Herbert U. Fielding
Senator, District No. 42
608 Gressette Building
Columbia, South Carolina 29202

Dear Senator Fielding:

By copy of your letter dated February 1, 1991, you have asked for our opinion as to whether the Charleston County School District could call for a referendum to change the method of election of board members from an at-large system to a single member district system.

A review of statutes relative to school districts and county boards of education does not reveal any which would authorize a school district or county board of education to call for such a referendum. S.C. Code Ann. §§ 59-17-10 et seq. and 59-19-10 et seq. (1990). No such authorization would exist for a county council to call for such a referendum on behalf of a school district or county board of education, as well. § 4-9-70. This Office has advised previously that a school district would not have any authority to conduct referenda other than as exists by statute. Op. Atty. Gen. dated July 10, 1989. Moreover, we have advised that absent statutory authorization for a referendum as to a specific issue, "such a referendum would be unlawful and of no legal affect [sic] upon the board of trustees." Op. Atty. Gen. dated July 21, 1978. If a county council were to attempt to hold an advisory referendum on behalf of a school board, pursuant to § 4-9-30(16), the results thereof could not, by themselves, change statutory provisions adopted by the General Assembly. Op. Atty. Gen. dated October 2, 1987.

This Office has also opined, on July 14, 1970, as to its belief that public funds should not "be expended for an advisory election which is not authorized by statute." That opinion also stated that

> [w]here there is no authorizing legislation, it would not appear that the Commissioners of Election would have authority to include on the form of the ballot matters for which there is no

> official authorization .... Any other construction of the statute would place the Commissioners in the position of being required to submit whatever issues and questions they may informally be requested to print on the ballot.

See also Op. Atty. Gen. No. 1559, dated August 1, 1963, which quoted from Griffith, et al. v. Board of Education of Forsyth County, et al., 112 S.E. 10, as follows:

> "But it is generally held that an injunction will issue to restrain the holding of an election, where there is no authority for calling it and where the holding of such an election would result in a waste of public funds." See also Solomon vs. Fleming, 51 N.W. 304, 18 Am.Jur., Elections, Sec. 117: Anno.: 33 A.L.R. 1376.

Based on the foregoing, previously-rendered opinions of this Office, we advise that no current statute appears to authorize a school board to call for a referendum concerning the method of election of its members, or to request the county election commission to put such a question on the ballot of the next general election. As noted in the opinion of July 21, 1978, a court would likely conclude that such a referendum would be of no effect. In any event, a referendum could not be used to change a law enacted by the General Assembly, absent express authorization from the legislature.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions