

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

June 8, 1989

SUBJECT: Taxation and Revenue - Budget Approval for
the Anderson County Department of Education.

SYLLABUS: The Anderson County Department of Education
should submit its annual budget and estimated
millage to the County Legislative
Delegation. This is to be done in all years
whether or not there has been a change in the
budget or millage from the previous year.
The Delegation has authority to approve or
modify the budget.

TO: Honorable C. D. Chamblee
Member, House of Representatives

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: Is the Anderson County Legislative Delegation
required by Section 5 of Act 510, Acts of 1982, to approve
the annual budget and tax levy for the Anderson County
Department of Education, including those years in which the
budget submitted by the Department reflects no change?

APPLICABLE LAW: Act 510, Acts of 1982, and Article XI,
Section 3, of the South Carolina Constitution.

DISCUSSION:

Article XI, Section 3, provides that:

"The General Assembly shall provide for
the maintenance and support of a system
of free public schools open to all
children in the State and shall estab-
lish, organize and support such other
public institutions of learning, as may
be desirable."

Act 510, Acts of 1982, was enacted in compliance with this
constitutional mandate. Section 5 of the Act provides
that:

"The Anderson County Department of
Education shall annually submit its

June 8, 1989

budget together with the total millage for the forthcoming fiscal year to the Anderson County Legislative Delegation not later than March Fifteenth."

The basic inquiry is whether the Delegation has authority to set the millage in a year in which there is no change in the millage from the previous year.

Similar language to that found in Section 5 of the 1982 Act was included in Section 31 of Act 868, Acts of 1950. We are informed that the budget has been consistently submitted to the Legislative Delegation since that time. We are further advised that the Delegation has consistently approved or modified the budget since that time. We find no legislative intent in the 1982 Act to alter or modify this procedure.

" . . . In 50 Am.Jur., Section 441, page 461, it is clearly stated that 'The re-enactment of a statute in substantially the same words effects no change in the law but merely continues the original law in force.'" Independence Ins. Co. v. Independent Life & Acc. Ins. Co., 218 S.C. 22, 61 S.E.2d 399. See also State v. Conally, 227 S.C. 507, 88 S.E.2d 591.

In view of the above, the budget and its millage should annually be submitted to the Legislative Delegation. The Delegation has authority to approve or modify the budget as it deems appropriate. It would be illogical to conclude that the Delegation has no authority regarding the budget except to receive the same.¹

CONCLUSION:

The Anderson County Department of Education should submit

¹The opinion herein expressed is fortified by the longstanding acceptance and practice of the Board to submit and the Delegation to receive, approve or modify the annual budget. Such is not to be overruled without cogent reason. See Emerson Electric Co. v. Wasson, 287 S.C. 394, 339 S.E.2d 118, Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 S.C. 314, 60 S.E. 682.

Honorable C. D. Chamblee
Page Three

June 8, 1989

its annual budget and estimated millage to the County Legislative Delegation. This is to be done in all years whether or not there has been a change in the budget or millage from the previous year. The Delegation has authority to approve or modify the budget.

JLAJr:wcg