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THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

August 28, 1989

SUBJECT: Taxation and Revenue - Oconee Tax Board Of Appeals.

SYLLABUS: The authority to set the rate of per diem for the members of the Board of Assessment Appeals for Oconee County presently rests with the Oconee County Legislative Delegation.

TO: Honorable Thomas C. Alexander  
Member, House of Representatives

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

QUESTION: Does the Legislative Delegation or the Oconee County Council have the authority to increase the per diem paid members of the Oconee Tax Board of Appeals?

APPLICABLE LAW: Act 1041, Acts of 1970, Act 250, Acts of 1973 and The Home Rule Act.

DISCUSSION:

The Board of Assessment Appeals was created by Act 1041, Acts of 1970. Section 4 of that Act further provided that:

" . . . The board members shall be paid on a per diem basis at a figure to be determined by the county legislative delegation."

The 1970 Act was amended by Act 250, Acts of 1973. The applicable language of that Act is that:

" . . . Each Board member shall be compensated on a per diem basis at a figure to be determined by the Oconee County Legislative Delegation."

Under both the 1970 and the 1973 Acts, the rate of per diem is to be fixed by the Oconee County Legislative Delegation.

August 28, 1989

Article VIII, Section 7, of the South Carolina Constitution was ratified on March 7, 1973 and the same prohibited the General Assembly from enacting "special legislation" or laws for a particular county. The General Assembly thereafter adopted Act 692, Acts of 1975, The Home Rule Act. Under that Act, the governing body of a county could, after January 1, 1980, modify, repeal or otherwise change special legislation that affected that county. In Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717, the court held that the governing body, with respect to a local act, could let the act continue as it was being operated when home rule became effective or it could provide otherwise by ordinance pursuant to home rule.

Here, you have a local act that has not been amended, modified or repealed, therefore, the authority to set the rate of per diem for the members of the Board of Assessment Appeals for Oconee County presently rests with the Oconee County Legislative Delegation.<sup>1</sup>

CONCLUSION:

The authority to set the rate of per diem for the members of the Board of Assessment Appeals for Oconee County presently rests with the Oconee County Legislative Delegation.

JLAJr:wcg

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<sup>1</sup>The constitutionality of the provisions of the two Acts is highly suspect. In Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133 (1946), a provision that provided for the approval of the salary of the Clerk of the County Board of Education by the County Legislative Delegation was held to be in conflict with the separation of powers provision of our Constitution. See also Aiken County Board of Education v. Knotts, 274 S.C. 144, 262 S.E.2d 14. Section 1 of the 1973 Act further evidences an even greater conflict with Article I, Section 8, of the Constitution. It there provides that the implementation and continuance of the Oconee County Tax Equalization Program shall be under the authority of the Oconee County Legislative Delegation. In all probability, this would be held to be an executive or administrative function and not a legislative function, however, the constitutionality of all statutes is presumed until declared otherwise by a court of competent jurisdiction.