

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. 88-20 p68

March 7, 1988

SUBJECT: Taxation & Revenue - School Districts Change  
of Boundaries.

SYLLABUS: The bonds of a school district from which a small area is detached would in all probability not be impaired by the detachment because the statute authorizing the boundary change was in existence when the bonds were issued and the tax value of the taxable property in the district has increased.

TO: Honorable Robert B. Brown  
Member, S. C. House of Representatives  
District 57

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

QUESTION: Is it constitutionally permissible to detach an area from an existing school district and add the same to another adjoining district?

APPLICABLE LAW: Section 59-17-20 of the 1976 South Carolina Code of Laws and Article I, Section 4, of the South Carolina Constitution.

DISCUSSION:

Section 59-17-20 provides for the method and manner that the boundaries of the school districts may be altered or changed. It is understood that each of the two school districts involved has outstanding bond indebtedness. The bonds so issued are contracts and within the protection of Article I, Section 4, of our Constitution. It provides that:

"No . . . law impairing the obligations  
of contracts, . . . shall be passed . .  
."

The detachment of an area from an existing school district could therefore impair the payments of the bonds by diminishing the security for payment. In example, Section 59-71-150 provides that the "full faith, credit and

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resources of the operating school unit are irrevocably pledged" for repayment of the bonds.

The general rule is stated in 64 Am.Jur.2d, Public Securities and Obligations, Section 403, as follows:

"It is definitely settled that public bonds issued by states and their subdivisions constitute contracts within the purview of constitutional provisions banning laws impairing the obligations of contracts, especially as respects payment and the source of payment for the bonds."

The detachment of areas from existing political entities, however, has been sustained against the allegation of the impairment of contracts. 2 McQuillin, Municipal Corporations, Section 7.26 and 56 Am.Jur.2d, Municipal Corporations, Section 85. In the latter, it is stated that:

". . . It is frequently said that where it has not been shown that as a result of the statute in question the municipality will be unable or will be any less able than previously to meet its obligation, no impairment of the obligation of municipal contracts have been made out. . . ."

The authority further provides:

"The view has also been taken that where the statute authorizing the detachment of territory was in effect prior to the time at which the municipal obligations alleged to have been impaired were issued, such obligations must be considered as having been issued subject to the power to alter the boundaries of the municipalities issuing them."

We are informed that both of these conditions are satisfied. The statute, Section 59-17-20, has been in existence in its present form for more than thirty-five years. It is further understood that the tax base of the school district from which the area will be excised has substantially increased. A court under such circumstances

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would in all probability conclude that the bonds of the school district would not be impaired by the detachment of the area consisting of a residential subdivision.

CONCLUSION:

The bonds of a school district from which a small area is detached would in all probability not be impaired by the detachment because the statute authorizing the boundary change was in existence when the bonds were issued and the tax value<sup>1</sup> of the taxable property in the district has increased.<sup>1</sup>

JLAJr:wcg

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<sup>1</sup>If the area to be detached includes a school or consists of a substantial value area, the results could be different.