

1983 WL 181708 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 12, 1983

**\*1 SUBJECT: Taxation, General Obligation Bonds, McCormick County School District 4.**

1. McCormick County School District 4 Board of Trustees can issue general obligation bonds as the governing body of the District.

2. General obligation bonds are limited to 8% of the assessed value of all taxable property of the school district only if they are issued by the school district's governing body pursuant to subsection 6 of [Article X, § 15 of the South Carolina Constitution](#).

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QUESTIONS:

1. Can the McCormick County School District 4 Board of Trustees issue general obligation bonds as the governing body of the District?

2. Are general obligation bonds issued by McCormick County School District 4 limited to 8% of the assessed value of all taxable property of the school district?

APPLICABLE LAW:

[§ 1-3-220, Code of Laws of South Carolina](#), 1976; [Article X, §§ 5 and 15 of the Constitution of South Carolina](#), and Act No. 472 of 1976.

DISCUSSION:

1. [Article X, § 15 of the Constitution](#) confers upon school districts the authority to incur general obligation debt. Subsection 6 of the constitutional provision specifically cloths the governing body of any school district with the power to issue general obligation bonds.

Act No. 472, Acts of 1976, provides in part that:

'The County Board of Education of McCormick County is hereby constituted as the Board of Trustees of School District No. 4 of McCormick County, with all powers and duties prescribed by law for such board of trustees. The board shall consist of seven members to be elected in the general election \* \* \*.'

In the event that candidates do not offer for any vacancies on the board the Governor shall appoint trustees to fill such vacancies upon the recommendation of the governing body of the county \* \* \*.'

There is thus the potential that the county board may be appointed by the Governor as opposed to elected. Currently, such members have all been elected, however, does the potential that the county board may be appointed limit such board's authority or ability to issue general obligation bonds?

Our Supreme Court held in [Crow v. McAlpine](#), 277 S.C. 240, 285 S.E.2d 355, that the State Constitution prohibits taxation without representation. The Court cited [Article X, § 5 of the South Carolina Constitution](#) which provides in part that:

'No tax, subsidy or charge shall be established, fixed or levied under any pretext whatsoever without the consent of the people or their representatives lawfully assembled \* \* \*.'

In [Crow](#), the Court ruled that a statute authorizing the Governor to appoint members of the Marlboro County Board of Education upon the recommendation of the county's legislative delegation did not violate the separation of powers provision of the [State Constitution, Article I, § 8](#). But the Court ruled that the taxing power of the State could not be delegated to an appointed political subdivision. The power could, however, be delegated to a school board or other political subdivision which is elected. [Crow](#) was cited and followed in the most recent decision of [Stone v. Traynham](#), Opinion No. 21807, filed November 9, 1982. The Court in [Stone](#) further implied that participation by an appointed board of education in the budgeting process of a school district constituted taxation without representation. We need not decide that issue here, however, for in [Crow](#) the Court reasoned that the problem with such a delegation was as follows:

\*2 'The taxing power is one of the highest prerogatives of the General Assembly. Members of this body are chosen by the people to exercise the power in a conscientious and deliberate manner. If this power is abused, the people could, at least, prevent a recurrence of the wrong at the polls.'

Thus, where the people have the direct power to correct the abuses of a board, i.e., through the polls, [Article X, § 5](#) would appear not to be violated.

Act No. 472, Acts of 1976, provides in the first instance that members of the Board of Trustees of School District 4 are to be elected and only where there has been a failure of someone to run for election may appointments be made by the Governor. The fact that the Governor may appoint members to the Board does not make such an appointed board under [Crow](#). For in fact, the electors of the school district could correct any abuse of power by an appointed member at the polls.

Additionally, [§ 1-3-220](#) provides in part that:

'The following officers shall be appointed by the Governor:

(2) An officer to fill any vacancy in a county office. The person so appointed shall hold office, in all cases in which the office is elective, until the next general election \* \* \*.'

The predecessor to the above section has been construed by this office to apply to members of the County Board of Education for Georgetown County. In the 1969-70 Opinions of Attorney General, No. 3036, page 325, the Attorney General ruled that members of a county board of education are county officers. If no other means are provided to fill a vacancy on the board, the vacancy may be filled by the Governor. Thus, notwithstanding the authority conferred upon the Governor under Act 472, such power already existed in his office pursuant to [§ 1-3-220](#).

Thus, there can be no distinction drawn between the McCormick County Board of Trustees and other elective boards within the counties. The members of these boards constitute county officers and the Governor has the authority of appointment to fill vacancies as indicated.

2. [Article X, § 15](#) sets forth conditions under which general obligation debt may be incurred. General obligation bonds are limited to 8% of the assessed value of all taxable property of the school district only if they are issued by the school district's governing body pursuant to subsection 6 of [Article X, § 15](#). Thus, if such debt is incurred pursuant to referendum under subsection 5, there is no 8% limitation, nor if the debt is incurred under subsection 7 in anticipation of the collection of ad valorem taxes is there an 8% limit. See Attorney General's Opinion issued March 17, 1982, copy attached.

CONCLUSIONS:

1. McCormick County School District 4 Board of Trustees can issue general obligation bonds as the governing body of the District.

2. General obligation bonds are limited to 8% of the assessed value of all taxable property of the school district only if they are issued by the school district's governing body pursuant to subsection 6 of [Article X, § 15 of the South Carolina Constitution](#).

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