

1983 WL 181793 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 15, 1983

***1 Re: H. 2242 Rat. No. 18**

H. 2348 Rat. No. 20

S. 160 Rat. No. 14

The Honorable Richard W. Riley
Governor
State of South Carolina
Post Office Box 11450
Columbia, South Carolina 29211

Dear Governor Riley:

You have requested an opinion as to the constitutionality of the above three bills. It is the opinion of this office that H. 2242 is probably unconstitutional, and that H. 2348 and S. 160 are probably constitutional.

First, H. 2242 is probably unconstitutional. It is a bill which would exempt certain school bond issues in Dillon County during calendar year 1983, from the provision of [§ 59-71-130, Code of Laws of South Carolina](#), 1976. The bill is most probably special legislation in violation of [Article III, § 34\(IX\) of the Constitution](#). This conclusion is based, in part, on the fact that general law can and does apply to the subject of the bill, namely [§ 59-71-130, id.](#) The language of the general law contemplates statewide application. Furthermore, this bill should not be deemed to fall under the permissible 'special provisions in general laws' exception found in [Article III, § 34\(X\)](#) because there appears in the bill no 'logical basis [or] sound reason for special legislation' such as this. [Gillespie v. Pickens County](#), 157 S.C. 217, 14 S.E.2d 900, 904 (1941). Therefore, H. 2242 is most probably unconstitutional.

Second, H. 2348 is most probably constitutional. It is a bill to authorize the Board of Trustees of Latta School District 3 of Dillon County to borrow an amount of money to retire a loan for school construction at Latta High School. There appears to be no general law applicable to this subject. Furthermore, it is not clear that a general law could be made applicable in light of the special responsibility conferred by Article XI of the Constitution upon the General Assembly for public education. The legislative powers of the General Assembly is much broader in dealing with school matters than it is in dealing with various other subjects. [McElveen v. Stokes](#), 240 S.C. 1, 124 S.E.2d 592, 596 (1962). For these reasons it is the opinion of this office that H. 2348 is most likely constitutional.

Third, S. 160, although not free from doubt, is probably constitutional. It deals with filling vacancies on the Georgetown County Board of Education. Although there is a general law which was applicable, [§ 59-15-10, supra](#), that general law was apparently superceded by Act No. 907 of 1962 which was a special act for Georgetown County. The general law apparently contemplates that there may be special legislation for specific counties on this subject because it provides for the appointment of county boards of education by the Governor upon the recommendation of the legislative delegation 'except as otherwise expressly provided'. Section 59-15-10, [supra](#). In light of the fact that the general law contemplates special legislation such as this bill, and in light of the fact that the General Assembly has broader legislative powers with respect to public education than it has with respect to various other subjects, it is the opinion of this office that S. 160 is probably constitutional.

*2 For the foregoing reasons, it is the opinion of this office that H. 2242 is probably unconstitutional, and that H. 2648 and S. 160 are probably constitutional.

Sincerely,

Frank K. Sloan
Chief Deputy Attorney General

(H. 2242, Rat. #18)

At a General Assembly Begun to Holden at Columbia, on the Second Tuesday in January, in the Year of Our Lord One Thousand Nine Hundred Eighty-Three, and Thence Continued by Divers Adjournments to the ____ day of _____

In the Year of Our Lord One Thousand Nine Hundred and Eighty-Three.

A JOINT RESOLUTION

TO PROVIDE THAT THE PROVISIONS OF [SECTION 59-71-130, CODE OF LAWS OF SOUTH CAROLINA, 1976](#), SHALL NOT APPLY TO ANY BONDS SOLD BY ANY SCHOOL DISTRICT IN DILLON COUNTY DURING 1983.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The provisions of [Section 59-71-130 of the 1976 Code](#), requiring the public sale of general obligation bonds of school districts and the advertisement of the sale if issued under the provisions of Article 1 of Chapter 71 of Title 59 of the 1976 Code known as the school Bond Act shall not apply to the sale of any bonds of any school district located in Dillon County which are sold during the calendar year 1983 if the rate of interest on such bonds is approved by the State Budget and Control Board.

SECTION 2. This act shall take effect upon approval by the Governor.

In the Senate House the ____ day of MAR 10 1983

In the Year of Our Lord One Thousand Nine Hundred and Eighty-Three.

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President of the Senate

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Speaker of the House of Representatives

Approved the ____ day of _____

Governor

(H. 2348, Rat. #20)

At a General Assembly Begun to Holden at Columbia, on the Second Tuesday in January, in the Year of Our Lord One Thousand Nine Hundred Eighty-Three, and Thence Continued by Divers Adjournments to the ____ day of _____

In the Year of Our Lord One Thousand Nine Hundred and Eighty-Three.

AN ACT

TO AUTHORIZE THE BOARD OF TRUSTEES OF LATTA SCHOOL DISTRICT 3 OF DILLON COUNTY TO BORROW AN AMOUNT NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS TO BE USED TO RETIRE A LOAN FOR MONEY USED FOR SCHOOL CONSTRUCTION AT LATTA HIGH SCHOOL AND TO PROVIDE FOR THE PAYMENT OF THE LOAN.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The Board of Trustees of Latta School District 3 of Dillon County may borrow an amount not exceeding one hundred thousand dollars from any bank or other lending agency at the lowest interest rate available to retire a loan for money used for school construction at Latta high School. The amount borrowed must be evidenced by a note to be executed by the chairman of the board and the county treasurer. The note shall bear such interest as may be agreed upon to be paid at such times as may be agreed upon with the right to anticipate payment at any time prior to maturity.

*3 SECTION 2. For the repayment of the loan, the auditor of Dillon County shall levy and the treasurer shall collect an annual tax upon all of the taxable property of the district sufficient to retire the loan and the interest due thereon, and the entire proceeds of such levy must be applied to the payment of the note, inclusive of interest, in full, at which time the levy shall be terminated. In the event the board may receive or have on hand any funds not otherwise pledged or designated for a particular use, such funds may be used for payment of the loan and interest on the loan. The full faith, credit, and taxing power of the district are irrevocably pledged for the payment of the loan.

SECTION 3. This act shall take effect upon approval by the Governor.

In the Senate House the ____ day of MAR 10 1983 In the Year of Our Lord One Thousand Nine Hundred and Eighty-Three.

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President of the Senate

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Speaker of the House of Representatives

Approved the ____ day of _____

Governor

(S. 160, Rat. #14)

At a General Assembly Begun to Holden at Columbia, on the Second Tuesday in January, in the Year of Our Lord One Thousand Nine Hundred Eighty-Three, and Thence Continued by Divers Adjournments to the ____ day of _____

In the Year of Our Lord One Thousand Nine Hundred and Eighty-Three.

AN ACT

TO AMEND ACT 907 OF 1962, AS AMENDED, RELATING TO THE SCHOOL DISTRICT OF GEORGETOWN COUNTY AND THE GEORGETOWN COUNTY BOARD OF EDUCATION, SO AS TO AUTHORIZE THE BOARD TO FILL VACANCIES BY APPOINTMENT BY A MAJORITY VOTE INSTEAD OF THE MEMBERS OF THE GENERAL ASSEMBLY REPRESENTING GEORGETOWN COUNTY WHO ARE RESIDENTS OF THE COUNTY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The last paragraph of Section 2 of Act 907 of 1962, as last amended by Act 831 of 1976, is further amended to read: 'Any vacancy occurring on the board for any reason must be filled by general or special election in the same manner as provided for the original election, except that if a vacancy occurs in the office of chairman, until the general or special election can be held and until the person so elected qualifies for office, the members of the board may fill the vacancy by appointment by majority vote.'

Section 2. This act shall take effect upon approval by the Governor.

In the Senate House the ____ day of MAR 10 1983 In the Year of Our Lord One Thousand Nine Hundred and Eighty-Three.

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President of the Senate

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Speaker of the House of Representatives

Approved the ____ day of _____

Governor

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