

1983 WL 181888 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 16, 1983

\*1 The Honorable M. Lois Eargle  
South Carolina House of Representatives  
530C Blatt Building  
Columbia, South Carolina 29211

Dear Representative Eargle:

You have informed me by telephone on May 12, 1983, that the Horry County Delegation has the power to determine the budget and any tax millage for the school board in Horry. You have inquired if this is constitutional in light of the case of [Gunter v. Blanton](#), 259 S.C. 436 (1972).

Act No. 1371 of 1968 provides in part that:

. . . the county board of education shall prepare a budget based on the budgets submitted by the trustees, superintendents or principals and shall determine the necessary millage, not to exceed fifty-eight mills, for the operation of schools for the next succeeding school year. This budget shall be submitted to the Senator and House members of Horry County on or before April first of each year. The Senator and the House members shall instruct the county auditor to levy the millage which in their discretion is necessary for school purposes on or before April fifteenth.

In [Gunter](#) and in a subsequent case [Aiken County Board of Education v. Knotts](#), 262 S.E. 2d 14 (1980) the court struck provisions that allowed a board to levy taxes once approved by the legislative delegation. This Act is somewhat different; however, the same rationale would appear to apply. In [Aiken](#), *supra*, at 17 the Court stated that:

As a general rule, the legislature may not, consistently with the constitutional requirement here involved, undertake to both pass laws and execute them by setting its own members to the task of discharging such functions by virtue of their office as legislations . . . As the functions of the Legislative Delegation in this instance are not incidental to or comprehended within the scope of legislative duties, the separation of powers doctrine as provided by Article I, Section 8 has clearly been violated.

In [Gunter](#), *supra*, at 441 the Court stated that the effect of authorizing the delegation to approve or disapprove the tax levy was to make

. . . the County Legislative Delegation a committee of the Legislature to determine not only when a tax increase was proper but also to take such action with regard to the increase as that committee might deem proper.

The statutory provisions found unconstitutional in these cases vary somewhat from the language involving Horry; however, the principle appears to be the same. Therefore, the constitutionality of the provisions regarding Horry County would be highly questionable. However, only a court of competent jurisdiction could hold these provisions to be unconstitutional.

Sincerely,

Treva G. Ashworth  
Senior Assistant Attorney General

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