1984 WL 250003 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
October 30, 1984

***1** The Honorable T. Edward Garrison
Member
South Carolina State Senate
Route 2
Anderson, South Carolina 29621

Dear Senator Garrison:
You have requested the opinion of this office as to the constitutionality of the application of both Education Finance Act (EFA) formulas to Anderson School District Four and the county equalization taxes. See § 59-20-10, et seq. of the Code of Laws of South Carolina (1976), as amended and Act 312, Acts and Joint Resolutions of South Carolina, 1971. See also Act 510 § 9, 1982 and Act 1080, 1966. According to your information, Anderson School District Four must pay a greater share of school taxes because of its relatively large tax base.

The EFA requires local matching funding of public schools in accordance with the tax paying ability of the district. See § 59-20-40. Thus, districts with a greater tax base must provide a greater percentage of local EFA funding and they receive a smaller percentage of state funding. Poorer districts provide smaller percentages of local funding and receive greater shares of state funding.

The county equalization tax to which you refer taxes each of Anderson's districts at the same millage rate but distributes the tax money to each of these districts on a per pupil basis. Because of the size of its tax base in relation to the number of its fewer pupils, some of District Four's tax money flows to other Anderson districts; however, this local tax should not affect the amount of the local share that District Four must pay in EFA money. That EFA share is fixed by EFA formulas which are based on tax paying ability. See § 59-20-40. Thus, the question appears to be whether county-wide equalization is still permissible when equalization is now provided on a state-wide basis.
'It has long been the policy in South Carolina, not only on a county-wide basis but also on a state-wide basis, to tax the wealth where it is in order to educate the child where he is. [Stackhouse v. Floyd, 248 S.C. 183, 149 S.E.2d 437, 446 (1966).]
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Many counties today impose a county-wide equalization levy on the entire county for the purpose of assisting the poorer school districts, and this practice has never been contested. Both the Shelor case and the Moseley case [Shelor v. Pace, 151 S.C. 99, 148 S.E. 726 (1929) and Moseley v. Welch, 209 S.C. 19, 39 S.E.2d 133 (1946)] are authority for the proposition that a county may give assistance to a school district from a county-wide tax levy and/or by the issuance of county bonds.' Stackhouse, 149 S.E.2d at 447.

Although Stackhouse and the cases cited therein do not present factual situations identical to that at issue here, Stackhouse clearly supports the constitutionality of a county-wide equalization levy. Although to investigate all factual aspects of the application of the Anderson equalization tax is beyond the province of this office in the issuance of opinions (Ops. Atty. Gen., December 12, 1983), this tax does not appear to be invalid merely because it is an equalization levy.

***2** The additional tax burden imposed by county equalization does not appear to be of consequence under the EFA. The local revenue required to be raised for the EFA remains the same in District Four regardless of equalization. The distribution to District Four of any additional revenue generated there by county equalization or other local taxation is clearly proper under the EFA. [1] See §§ 59-20-30 and 59-20-40(2). The distribution to other school districts of any additional revenue generated by the county equalization tax in District Four would not appear to be improper; however, a possibly objectionable situation might be present if a district were not generating enough of its own revenue to fund its local EFA share without receiving equalization revenue from District Four. The objection could be that such a district would not be paying for its own EFA share; however, the problem in such a situation would not appear to be with the existence of county equalization. Instead, the problem, if any, would be in the failure to raise additional revenue in the receiving district. See Act 510, § 9, 1982.

The county equalization tax could be attacked as a special law which is now inconsistent with general provisions in the EFA for the use of an index of tax paying ability as a basis for local funding. See Art. III, § 34, Constitution of South Carolina (1895). [2] Support for the validity of this special tax could come from Stackhouse's discussion of equalization and from Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975). Moye stated that previous cases '. . . indicated that section 34 does not deal with matters specifically covered by article XI [concerning education].' Moseley v. Welch, 39 S.E.2d at 137, found no violation of Art. III § 34 in the special tax legislation for Williamsburg County Schools. It stated that the numerous special laws related to the fiscal affairs of the schools were '. . . at least indicative of a constant legislative opinion that conditions in the various counties are such as to preclude uniformity of treatment in relation to the administration of school affairs.' Moseley stated that '[t]his conclusion of the General Assembly is entitled to much respect and in doubtful cases should be followed.' 39 S.E.2d at 137. This authority indicates that any special legislation concerns about the county equalization would be resolved in favor of upholding the 1971 law.

At least one state circuit court has reached a contrary conclusion about somewhat similar laws. School District No. Five v. J. Steve Summers, etc., et al. (CP Orangeburg, #80-613, December 14, 1981). That case found a county equalization levy in Orangeburg to be in violation of Art. III § 34 when the EFA provided for equalization generally; however, that opinion did not discuss Stackhouse, Moye or Moseley. Although the Orangeburg order is not binding in Anderson County, it allows for the possibility that another court could find Anderson's laws to be violative of Art. III § 34. See also School District No. Four of Anderson County v. Anderson County Board of Education, et al. (CP Anderson, #80-1200, March 16, 1982).

***3** To catalog all conceivable challenges to the Anderson laws is not possible within the format of this opinion especially when no factual investigation has been done. See note 1, supra. Nevertheless, in reading any conclusion about the laws in question, great weight must be given to the presumption of constitutionality accorded any legislation. Ops. Atty. Gen. (August 18, 1983). The above authority indicates that the requirement for the application of both county and EFA equalization to Anderson schools probably would be sustained by a court if litigated. Of course, facts of which this office is not aware could cause a court to reach a contrary conclusion about the actual application of the laws, but even if minor inequities were found to be present, they would not necessarily be fatal if the taxes were apportioned reasonably. Stackhouse, 149 S.E.2d at 447. An additional caution here is that noted above about the Orangeburg decision.

If we may be of further assistance, please let me know.
Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

1 For the reasons noted above, we have not investigated the school budget system in Anderson County to determine how much, if any, of District Four's local share of the EFA is funded by the county organization revenue.

2 Because the EFA does not determine the method of raising local revenue, the inconsistency, if any, would appear to be minor. See Sutherland Statutory Construction, Vol. 2A § 51.01 (4th Ed.); Ops. Atty. Gen. (August 28, 1980).

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