1983 WL 182009 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
September 26, 1983

***1** Francis K. Sullivan
Executive Secretary
Charleston County Legislative Delegation
Charleston County Office Building
Room 307
Post Office Box 487
Charleston, South Carolina 29402

Dear Mr. Sullivan:
You have asked this office to advise the Charleston County Legislative Delegation as to how the budgets of nine (9) special purpose districts or commissions in Charleston County can continue to be approved by the legislative delegation in a manner that is legally proper. It is our opinion that the delegation cannot lawfully exercise approval authority over any particular budget for these districts or commissions.

The Supreme Court has held, in a long line of cases, that the legislative delegations of the various counties may not 'participate as corporate authorities' of a political subdivision 'in the determination of the amount of the tax levy' for that political subdivision. Gunter v. Blanton, 259 S.C. 436, 441, 192 S.E.2d 473, 475 (1975). Such participation violates the constitutional requirement of separation of powers. Supra at 440, 192 S.E.2d at 474. In Gunter, a statute was held unconstitutional which provided that 'no . . . tax levy [for the district] shall be increased in any year without the approval of a majority of the . . . legislative delegation.' Supra at 440, 192 S.E.2d at 474. The Court considered a similar question and applied this rule of law broadly in the recent case of Aiken County Board of Education v. Knotts, 274 S.C. 144, 262 S.E.2d 14 (1980). The Court held that
participation on the part of the Legislative Delegation in the administrative functions of the board in the determination of the tax levy necessary for the school district budget [was] executive in nature . . ..

***

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.

Supra at 148, 150, 262 S.E.2d at 17. A prior opinion of this office dealing with this subject is attached.

Although the delegation may not constitutionally participate in the determination of the budget or of the tax levy for any special purpose district or other political subdivision of the state, the governing body of a district may be required by statute to make certain reports to the delegation. Little v. Willimon, 103 S.C. 50, 51, 87 S.E. 435 (1915). The Court has upheld the right of the delegation 'to obtain information as to the . . . manner in which the duties of the executive department are being discharged.' Bramlette v. Stringer, 186 S.C. 134, 146, 195 S.E. 257, 262 (1938) citing Ex Parte Parker, 74 S.C. 466, 55 S.E. 122 (1906). But any actions of the delegation in this regard must, of necessity, be 'merely supervisory,' and 'all matters of discretion relating to the administration of [local] affairs [must] still remain[ ] in the [local governing board] . . ..' Bramlette v. Stringer, supra at 143, 195 S.E. at 261.

***2** Based on our research, this appears to be the only involvement which the delegation may have in the development of any particular budget of a political subdivision within the state. [1]

If any reporting requirement were to be imposed by statute on the various boards and commissions, the Constitution would most likely require this to be a general law of statewide application. Art. VIII, § 7, South Carolina Constitution.

Since the ratification of the Home Rule Amendment to the Constitution, the Supreme Court has consistently struck down special legislation relating to local boards such as the ones which are the subject of your inquiry. Cooper River Park and Playground Commission v. City of North Charleston, 273 S.C. 639, 259 S.E.2d 107 (1979); Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976). Instead the Constitution apparently mandates that local government be regulated by general laws. See Richardson v. McCutchen, 278 S.C. 117, 292 S.E.2d 787, 788 (1982). Examples of such apparently permissible general laws relating to special purpose districts are codified at §§ 6-11-91, 273, 275, 410, and 610, Code of Laws of South Carolina, 1976 (as amended). Thus it would appear that the budgetary authority for the nine (9) boards and commissions named in your letter should be established by general law. For reasons stated above, however, that authority could not be placed with the delegation.

Sincerely yours,

David C. Eckstrom

Assistant Attorney General

Footnotes

1 Of course the General Assembly may set a maximum millage ceiling for a particular political subdivision without violating the separation of powers requirement of the Constitution. Gunter v. Blanton, supra at 441, 192 S.E.2d at 476. However, in order also to comply with the Home Rule Amendment to the Constitution, such a ceiling must now be set by general law. The reasons for this conclusion are set out more fully below.

As an aside, the General Assembly may also, of course, establish the budget and millage for certain school districts pursuant to Art. XI, Section 3 of the Constitution and § 4-9-70, Code of Laws of South Carolina, 1976. But those provisions are not implicated here.

1983 WL 182009 (S.C.A.G.)