

1982 WL 189201 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 11, 1982

\*1 The Honorable Thomas L. Moore  
Chairman  
Aiken County Legislative Delegation  
Suite 606  
Gressette Senate Office Building  
Post Office Box 142  
Columbia, S. C. 29202

Dear Senator Moore:

You have requested the opinion of this office as to several matters concerning your legislative delegation's consideration of whether to make the Aiken County School Board fiscally autonomous. Jim Holly, Assistant Attorney General, to whom you directed your request, is in court this week and next so I am responding on his behalf.

You wish to know whether the fiscal autonomy would have to be accomplished by amendment or by statute. The present levying authority of the Aiken County Board is limited (See Acts 216 and 217, Acts and Joint Resolutions of South Carolina, 1981; Act 268 of 1977). Any new legislation should state that it is amending those acts which contain permanent provisions for levying, Acts 216 and 268.

You have also asked whether such legislation must be drafted so as to apply statewide. I assume that you are referring to the prohibition against special legislation in Article III § 34 of the Constitution of South Carolina, 1895, as amended. In response to your request, I am enclosing Op. Att'y Gen. July 22, 1980 (by J. Emory Smith, Jr., Assistant Attorney General). That opinion's discussion of Article III § 34 should be applicable here. Your fourth question appears to be similar to your second. If this July 22, 1980 opinion does not answer it, please let me know.

Finally, you have asked whether the legislative delegation has the right to delegate taxing authority to another department within the county by either an act of the legislature or by a county council ordinance. Currently the power to increase tax millage above the 11 mill increase allowed by Act 216 of 1981 rests with the legislature. See Op. Att'y Gen. April 2, 1981 (by James H. Holly, Assistant Attorney General). Thus, the legislature is the only body which can delegate that power and it may delegate it to any appropriate government body in Aiken. See § 4-9-70 of the Code of Laws of South Carolina (1976). But see Op. Att'y Gen. October 25, 1979 (by Karen LeCraft Henderson, Senior Assistant Attorney General).

I hope that the above information will be of help to you.

If we may be of further assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.  
Assistant Attorney General

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