

1980 WL 121201 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 1, 1980

*1 Dr. W. B. Royster
Superintendent
Anderson School District No. 5
Post Office Drawer 439
Anderson, South Carolina

Dear Dr. Royster:

You have requested the Opinion of this Office as to several matters regarding Act 234, Acts and Joint Resolutions of South Carolina, 1979 and pending House Bill 3726. Act 234 provides for the election of the trustees for School District Five and House Bill 3726 provides for a County Board of Education in Anderson County. Your questions regarding this legislation are separately addressed below.

You have asked whether Act 234 makes unconstitutional changes in the membership of the Board of Trustees of School District Five. This district previously has had nine trustees elected at large from the district (see Act 643 of 1960, §§ 1 and 3) but, under Act 234, two of these nine trustees will be elected at large and seven will be elected from single member districts; however, apparently, the terms of six members of the old Board have not expired and Act 234 allows them to continue to serve on the new Board until the end of their terms. If these old members continue to serve, the combined Board will have fifteen members. You have questioned whether this combination will unconstitutionally dilute the votes of the members of the old Board.

I am enclosing an Opinion of this Office dated July 26, 1976 written by Karen LeCraft Henderson, now Senior Assistant Attorney General, which addresses a similar question. That Opinion found no violation of the one man—one vote principle in a combined board composed of hold-over, at large elected trustees and new members elected from single member districts. That conclusion should be applicable here. In addition, in response to your other question regarding this Act, the Justice Department has approved these changes in the trustees' election.

As to House Bill 3726, you have requested an interpretation of the grant of central authority for public schools to the County Board of Education. Relevant provisions of this bill are set out below:

Section 1: Notwithstanding any other provision of law, effective January 1, 1981, the central authority of the public school system shall be in a county board of education . . .

Section 5: Notwithstanding any other provision of law, the County Board of Education shall have general supervision of all phases of the public school program in Anderson County, except as to matters expressly delegated by statute to boards of trustees of local school districts.

Construing these provisions together, they appear to give the County Board powers over educational matters which are not expressly delegated to the boards of trustees of local school districts. Under Act 643, § 2 of 1960, Anderson County School District boards of trustees are given all the powers and duties vested in such boards under the general law of the state and under any special law.¹ Thus, except as to those powers expressly given to the County Board by Bill 3726, its central authority is limited by those powers given to the school district boards of trustees.

*2 Finally, you have questioned the consistency of the method of election of the members of the County Board of Education with the one man—one vote principle. Under Bill 3726, the five person Board is composed of one member from each of the school districts who resides in and is elected by the residents of that district. According to you, the populations of these districts vary considerably in that your district has nearly fifty (50%) percent of the county's citizens.

[Hadley v. Junior College District](#), 397 U.S. 50, 25 L.Ed.2d 45, 90 S.Ct. 791 (1970) applied the following statement of the one man—one vote principle to the election of trustees from a Missouri junior college district:

... as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials. 25 L.Ed.2d at 50 and 51.

The court struck down the Missouri apportionment plan under which fifty (50%) percent of the trustees of the junior college district were elected from a subdistrict containing sixty (60%) percent of the district's total school age population. See also [Baker v. Regional High School District No. 5](#), 520 F.2d 799 (2nd Cir. 1975), which used the [Hadley](#) test to strike down apportionment plans for two regional school boards; Opinions of this Office dated March 3, 1976 and April 24, 1970, respectively written by Karen LeCraft Henderson, now Senior Assistant Attorney General, and E. N. Brandon, former Assistant Attorney General.

Whether the County Board of Education exercises governmental functions would seem to be the key to whether the [Hadley](#) test should be applied to the Bill 3726 apportionment plan. The boards in [Hadley](#) and [Baker](#) were found to exercise governmental functions. Although their powers seem greater than those proposed for the County Board here, the Board is designated the central authority for the school system ([see supra](#)), and it is granted the specific power to levy annual taxes and adjust the millage required to retire school bonds.

I have set out this discussion of cases regarding the one man—one vote principle for informational purposes only. Issuing an advisory Opinion as to the probable constitutionality of House Bill 3726 would be premature, at this time, when it has not yet been passed by the legislature and signed into law by the Governor.

In conclusion, the changes in the election of school district trustees made by Act 234 have been approved by the Justice Department and they appear to be consistent with the one man—one vote principle; however, this Office expresses no Opinion at this time as to the proposed changes in the election of county school board members under Bill 3726. Finally, any powers the County Board would derive from being designated as the central authority for the school system would be limited by those powers given to the school district boards of trustees by general and local laws. If I can be of further assistance to you, please let me know.

Yours very truly,

*3 J. Emory Smith, Jr.
State Attorney

Footnotes

¹ This section is not set out in the 1962 Code nor is it indexed in the 1976 Code, but it has apparently not been repealed.