

1980 WL 120778 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 22, 1980

*1 Dr. Fred P. Hamilton
Superintendent of Education
School District of Oconee County
Administrative Office
Walhalla, South Carolina 29691

Dear Dr. Hamilton:

You have requested an opinion of this office as to whether the County Council of Oconee County has the authority to levy taxes for Oconee County Schools, which action necessarily affects the funding level for the schools. Although this matter is not free from doubt the County does appear to have sufficient authority to continue to make the levies.

Act 805, Acts and Joint Resolutions of South Carolina (1978) states that '. . . all powers and duties relating to tax levies for school purposes are devolved upon the governing body of Oconee County which is county council.' This statute should permit the county council to set levies for the schools. See Opinion of this Office dated October 25, 1979, written by Karen LeCraft Henderson, Senior Assistant Attorney General. See also [§ 4-9-70, Code of Laws of South Carolina \(1976\)](#).

The statutory authorization in Act 805 does not appear to be in conflict with constitutional prohibitions on special legislation (Art. III § 34, Constitution of South Carolina, 1895, as amended) or legislation for specific counties ([Art. VIII § 7 of the Constitution](#)). Although the Supreme Court did not squarely address the issue, in [Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 \(1975\)](#), it said that previous cases indicated that § 34 did not '. . . deal with matters specifically covered by Article XI [of the Constitution, which pertains to education]' [217 S.E.2d at 38](#). In addition, although its reasoning was based in part upon since amended constitutional provisions, the Supreme Court has upheld, under § 34, a law authorizing school tax levies by a particular county. See [Moseley v. Welch, 209 S.C. 17, 39 S.E.2d 133 \(1946\)](#); see also [Hay v. Leonard, 212 S.C. 81, 46 S.E.2d 653 \(1948\)](#); however, the court has stated that the power of the legislature in school matters is not always broad enough to ensure that an act will not contravene § 34. See [McElveen v. Stokes, 240 S.C. 1, 124 S.E.2d 592 \(1962\)](#). As for [Article 8 § 7, Moye v. Caughman](#) indicates that educational matters are not subject to that section's prohibitions because education is the duty of the legislature rather than the counties; however, this recognition that the legislature is vested with duties over education could possibly be read to restrict that body's power to relinquish its control to county councils. See Opinion of this Office dated October 25, 1979, written by Karen LeCraft Henderson, Senior Assistant Attorney General.

In conclusion, under Act 805, Oconee County Council may levy taxes for the county's schools. Although the constitutional validity of this legislation is not entirely certain, it does appear to be consistent with case law interpretation of [Art. III § 34](#) and [Art. VIII § 7](#).

The legislation for other counties to which you referred appears to be somewhat varied, but I will be happy to send you copies of it if you are interested. If I can be of further assistance, please let me know.

Yours very truly,

*2 J. Emory Smith, Jr.
Assistant Attorney General

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