

1979 WL 42841 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 6, 1979

**\*1** W. Jerry Fedder, Esquire  
Oconee County Attorney  
Post Office Box 791  
Seneca, South Carolina 29678

Dear Mr. Fedder:

You have requested opinions from this Office concerning the powers of the Oconee County Council (Council) with regard to various school matters in Oconee County. I shall respond to them in the order in which you have posed them:

1. In response to your inquiry as to whether or not the Council is authorized to transfer general county tax funds (not school tax funds) to the Oconee County School Board to the latter's use for school purposes during a given fiscal year but after the school taxes levied for that year have been expended, my opinion is that it is not so authorized. Heretofore, the South Carolina Supreme Court has approved the imposition of a county tax and the county's appropriation of that tax to another political entity in furtherance of a public purpose. See, e.g., [Allen v. Adams](#), 66 S.C. 344, 44 S.E. 938 (Town of Edgefield issued bonds to help school district of the Town of Edgefield build a school building); [Smith v. Robertson](#), 210 S.C. 99, 41 S.C.2d 631 (Charleston County issued bonds to buy site for medical college); [Cothran v. Mallory](#), 211 S.C. 387, 45 S.E.2d 599 (Spartanburg County and City of Spartanburg jointly built auditorium); [Shelor v. Pace](#), 151 S.C. 99, 148 S.E. 726 (Oconee County issued bonds for school purposes); [Grey v. Vaigneur](#), 243 S.C. 604, 135 S.E.2d 229 (Jasper County issued bonds for school district); [Stackhouse v. Floyd](#), 248 S.C. 183, 149 S.E.2d 437 (Dillon County issued bonds for school district); [Gilbert v. Bath](#), 267 S.C. 171, 227 S.E.2d 177 (Florence County donated \$1,000,000 to Pee Dee Regional Health Service District to build hospital). Those cases were decided before the enactment of new Article X of the South Carolina Constitution, however, and, in my opinion, certain provisions of new Article X may no longer allow this practice. Section 5 of Article X provides in part that '[a]ny tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.' See, [State v. Osborne](#), 193 S.C. 158, 7 S.E.2d 526. Section 14(4) of Article X provides in part that any political subdivision of this State, including a county, which incurs general obligation debt can do so 'only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision' [emphasis added]. While education undoubtedly subserves a public purpose, it may no longer be a corporate purpose of a county. See, e.g., § 4-9-30(5), CODE OF LAWS OF SOUTH CAROLINA, 1976; cf., former art. X, § 6 S.C. CONST.; see also, [Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36. Consequently, a county may no longer be authorized to use general county tax funds for educational purposes but, instead, may be limited, insofar as the funding of educational purposes is concerned, to the levying and appropriation of school taxes only. This conclusion is borne out by other provisions of new Article X of the State Constitution which empower all political subdivisions, including school districts, to incur bonded indebtedness without limitation so long as an approving referendum is first held. See, e.g., S.C. CONST. art. X, § 15(5). The intent of the General Assembly, in authorizing all political subdivisions to incur bonded debt without limitation pursuant to an election, was, in part, to make them self-sufficient and to do away with any necessity for one political subdivision to assist in financing the activities of another because of the latter's inability to do so.

**\*2** This opinion is not free from doubt, however, inasmuch as the South Carolina Supreme Court has in the past authorized such assistance. Nevertheless, I think that the enactment of new Article X and of certain provisions in the 'home rule' legislation which make it clear that counties have had no additional school powers devolved upon them by virtue of that legislation [see, § 4-9-70, CODE OF LAWS OF SOUTH CAROLINA, 1976], as well as the South Carolina Supreme Court's opinion that public education is a function of the General Assembly rather than of counties [see, [Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36], all indicate that such assistance may no longer be permitted.

2. In response to your inquiry as to whether or not the Council can transfer non-tax monies to the School Board for school purposes, my opinion is that it cannot for the reason stated in paragraph one hereinabove. Our Office has taken the position that revenue sharing funds from the federal government are subject to the same State constitutional restrictions as are state or local public funds. See, [Harris v. Fulp](#), 178 S.C. 332, 183 S.E. 158.

3. In my opinion, deficit financing by any political subdivision or any school district in this State is prohibited by [Section 7\(b\) of Article X of the South Carolina Constitution](#) unless such financing is done in order to meet 'ordinary expenses' and, in that case, the deficiency is to be paid during the ensuing year by the levy of a tax sufficient to do so.

With kind regards,

Karen LeCraft Henderson  
Senior Assistant Attorney General

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