

1977 S.C. Op. Atty. Gen. 173 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-226, 1977 WL 24568

Office of the Attorney General

State of South Carolina

Opinion No. 77-226

July 20, 1977

*1 Honorable Eugene S. Blease
Member
House of Representatives
207 Greenwood Highway
Saluda, South Carolina 29138

Dear Representative Blease:

You have requested an opinion from this Office as to whether or not the Saluda County Council (Council) can lend county funds to Saluda School District No. 1 (District) for the purpose of aiding in the construction of a school building. In [Grey v. Vaigneur](#), 243 S.C. 604, 135 S.E.2d 229 (1164), the South Carolina Supreme Court held that Jasper County was not prohibited from issuing county bonds in order to assist a co-extensive school district in the construction of public school facilities.—The District, however, is not co-extensive with Saluda County and the State Supreme Court has also held that county funds (which represent taxes collected county-wide) cannot constitutionally be used for the benefit of less than the county-wide taxpayers. See, e.g., [Moseley v. Welch](#), 209 S.C. 19, 39 S.E.2d 133 (1946); cf., [Stackhouse v. Floyd](#), 248 S.C. 183, 149 S.E.2d 437 (1966).

In response to the inquiry as to whether or not Saluda School District No. 1 (District) is authorized to borrow funds in anticipation of taxes, Section 22 of Act No. 1244 of 1972 [57 STAT. 2432 at 2439 (1972)] authorizes the District board of trustees to borrow money ‘in anticipation of the collection of taxes and any anticipated revenue to come into their hands for school purposes.’ Among other requirements imposed by the provisions of Act No. 1244, any note so issued must first be approved by the Saluda County Legislative Delegation. I am enclosing a copy of that act for your convenience. Nevertheless, borrowing in anticipation of taxes is authorized only as to taxes already levied so that the District cannot first borrow and then raise the tax millage in order to pay the loan. It must first raise the millage (and this, most probably, must be done in compliance with the provisions of Sections 59–73–10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976) and then borrow in anticipation of the collection of that increased millage.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

Note: In the event that the State Supreme Court decides in the action now before it that new Article X of the South Carolina Constitution becomes effective after November 30, 1977, then the District will be able to incur sixteen (16%) percent rather than eight (8%) percent bonded debt between the date of the decision and November 30, 1977, pursuant to Act No. 10 of 1977.

KLH

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