

1979 WL 43236 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 14, 1979

*1 Honorable T. Dewey Wise
Senator
District No. 16
State House
Columbia, South Carolina 29201

Dear Senator Wise:

You have requested an opinion from my Office as to whether or not House Bill 3408, which provides for the tax millage to be levied in Charleston County for the Charleston County School District and for minimum levels of certain District appropriations, including salaries, supplies and maintenance, is constitutional. In my opinion the legislation may well be unconstitutional as a special law where a general law can be (and has been) made applicable in violation of Article III, Section 34, subdivision ix of the South Carolina Constitution of 1895, as amended.

Act No. 163 of 1977, the South Carolina Education Finance Act of 1977, is a general law, one of whose primary purposes is to equalize educational programs for public school children throughout the State. [§ 59-20-30\(a\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended (Cum.Supp.). To do so, it attempts to establish a reasonable balance between the portion of the cost of the programs paid by the State and the school districts collectively. *Id.* Funding is determined by the State Board of Education which first calculates the cost of the Defined Minimum Program (DMP), including requirements for personnel, school materials and maintenance. §§ 59-20-20(4) and (6) and 59-20-50(4). Then, the General Assembly annually sets the funding level necessary to provide the DMP for the 'base student cost.' §§ 59-20-20(6) and 59-20-40(1)(b). This 'base student cost' is then multiplied by an adjusted figure representing the total students in the school district [§ 59-20-40(1)(d)] and the district's share of this cost is then calculated according to its relative tax paying ability as determined by the State Tax Commission. §§ 59-20-20(3) and 59-20-40(1)(e). Provisions are made for a phased implementation of this plan, but each district '... shall increase its total effort annually by at least the amount required in this section, or by five percent in real dollar terms, or shall increase the millage for the local share of expenditures under the foundation program by at least two and one-half mills.' § 59-20-40(3)(b); see also, [§ 59-20-30\(4\)-\(7\)](#). No increase is required, however, if sufficient revenue exists within the terms of Section 59-20-40(6). Any local school district may increase its total effort above the required funding as deemed necessary to meet the aspirations of the people of the district. § 59-20-50(2). In addition to the above requirement for funding, local school districts must prepare reports, which, in part, include priorities in the expenditure of funds § 59-20-60(3)(b). The Department of Education reviews these reports and assists the school districts in improving their programs. § 59-20-60(5)(b).

In setting a tax millage ceiling for the Charleston County School District, House Bill 3408 may prevent that district from paying its share of the cost of implementing the Education Finance Act or it may prohibit additional local financing of the schools. In expressly providing for minimum levels for salaries, supplies and maintenance, it may establish levels that are either above or below those determined for the DMP pursuant to the Education finance Act. Consequently, it is possible that those minimum levels may require increases in local effort for those areas of a district's educational program and cause other areas to fall short.

*2 While it is true that the General Assembly can enact local legislation regarding school matters without violating the 'no laws for a specific county' language of [Article VIII, Section 7 of the State Constitution](#) [see, e.g., [Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975)], where it has already enacted general legislation which provides for the funding of

public education on a uniform, equal basis throughout the State, special legislation which carves out exceptions thereto for a specific school district may well be invalid. See, e.g., *McElveen v. Stokes*, 250 S.C. 1, 124 S.E.2d 592 (1962). Finally, the local legislation may also be violative of [Article X, Section 7\(b\) of the State Constitution](#) which empowers each school district in the State, inter alia, to prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year.

Yours very truly,

Daniel R. McLeod
Attorney General

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