1979 WL 43542 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 23, 1979

***1 RE: Requested Attorney General's Opinion**

Mr. C. Walker Limehouse
Attorney at Law
Post Office Box 627
Orangeburg, South Carolina 29115

Dear Mr. Limehouse:
You have requested an Opinion as to the constitutionality of § 4 of House Bill No. 3081 (R269), which provides '. . . for a partial equalization program for funding the various school districts of the County.' The Act is directed only at Orangeburg County. You stated in your letter that Orangeburg County is divided into eight separate school districts, and the district you represent, School District No. 5, serves approximately forty (40) percent of the pupils in Orangeburg County, while the taxpayers of School District No. 5 pay approximately fifty (50) percent of the total school taxes collected in the County.

R269 directs the Treasurer of Orangeburg County to deposit in a special account an amount equal to eight mills of the amount of tax monies collected for each school district in the County for FY 1979. The millage to be deposited in said special account increases to twenty-one mills by FY 1981. The heart of the Act in question states as follows, 'The proceeds of the monies deposited in the special account each year shall be dispersed to each school district in the county on a per pupil basis based on the one hundred thirty-five day weighted pupil count for the previous year.' Finally, the Act specifies that the tax collection for the special account shall be over and above the computation of the local tax effort of districts used to determined entitled funds for such district under the State Education Finance Act.

Of course, only the Courts of this State in a proper proceeding possess the necessary authority to declare an Act of the General Assembly to be in violation of either the State or Federal Constitutions. Even in a proper circumstance, the Court will refrain from declaring an Act unconstitutional unless the subject act is clearly so, as noted in Moseley v. Welch, 209 SC 19, 39 SE2d 133, (1946):
We approach the consideration of the various constitutional grounds upon which this legislation is challenged with the following well-settled principles in mind: The supreme legislative power of the State is vested in General Assembly; the provisions of our State Constitution are not a grant but a limitation of legislative power, so that the General Assembly may enact any law not expressly, or by clear implication, prohibited by the State or Federal Constitution; a statute will, if possible, be construed so as to render it valid; every presumption will be made in favor of the constitutionality of a legislative enactment; and a statute will be declared unconstitutional only when its invalidity appears so clearly as to leave no room for reasonable doubt that it violates some provision of the Constitution. (citations omitted)

Bearing in mind this admonition of the Supreme Court, the Opinion of this Office is that the questioned legislation is of suspect constitutionality on two grounds. First, Article III, § 34, subsection IX of the South Carolina Constitution of 1895, as amended, prohibits special legislation where a general law can be, and has been, made applicable. The South Carolina General Assembly has heretofore enacted the South Carolina Education Finance Act of 1977, § 59-20-10, et seq., Code of Laws of South Carolina, 1976, as amended. The express purpose of the South Carolina Education Finance Act is 'To establish a reasonable balance between the portion of funds to be paid by the State and the portion of the funds to

be paid by the districts collectively in support of the foundation program.' § 59-20-30(5). Thus, R269 obviously attempts to provide within Orangeburg County an equalization program, when the State has already provided for equalization of funding between the State and all school districts. The Act in question, therefore, appears to contravene the constitutional prohibition against enacting special legislation when a general law has already been made applicable. You will please find enclosed a copy of the Opinion of Daniel R. McLeod, Attorney General, dated August 14, 1979, concerning House Bill 3408, which limited the tax millage to be levied in Charleston County for school purposes. The enclosed Opinion more fully set forths the reasons underlining the constitutional prohibition just mentioned.

***2** Second, R269 arguably violates the mandate of Article 1, § 3 of the South Carolina Constitution of 1895, as amended. Article 1, § 3 states, 'The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of law.' You stated that the result of R269 will be as follows, 'The net effect of Section 4 is to require the taxpayers of School District No. 5 to assume payment of a portion of the cost of education of one or more of the other districts.' In South Carolina school districts are separate political subdivisions of the State and each is a body politic corporate. § 59-17-10. As I understand the questioned legislation and the current situation in Orangeburg County, there has been no consolidation or alteration of school districts' boundaries. The South Carolina Supreme Court has ruled in a number of cases in which school districts have consolidated, that a debt free district is not denied property without due process of law or equal protection of laws when it consolidates with an indebted district. The rationale behind such holding is that, after consolidation, the debt free district obtains possession and use of the resources and facilities of the indebted district. See Moseley v. Welch, Supra; Nesbitt v. Gettys, 219 SC 21, 64 SE2d 651 (1951); and Moseley v. Welch, 218 SC 242, 62 SE2d 313 (1950). The following excerpts from the Opinion in Moseley v. Welch, 209 SC 19, 39 SE2d 133 (1946), demonstrate the application of South Carolina's constitutional provision concerning equal protection of laws:

The voted bonds under the authority of the general law which became obligations of the district to be paid by a tax levy on the property within the district. The status of the bonds was definitely fixed as district obligations. This was done without the consent of participation of the people from other parts of the County. The buildings were not located or constructed under a county-wide plan of education.

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As heretofore stated, we construe this act as leaving the corporate entity of the several school districts undisturbed. The county is not being consolidated into one school district. The property continues to be that of the school district. . ..

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'The effect of this is to permit a school district to acquire the absolute ownership of property and to require the citizens of other districts to help pay for it without acquiring any legal interest whatever therein. This plainly seems a denial of due process of law and the equal protection of the laws to the plaintiffs, who are citizens and taxpayers of Salters School District No. 32, which has no bonded indebtedness, but who citizens and taxpayers are thus required to help pay off the bonds of other districts, which have had the full and exclusive benefit of the proceeds of the obligation.'

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***3** We proceed to consider the validity of that portion of the Act (§ 2) which directs that an offset be set between all current operation deficits and balances of the several school districts and the differences placed to the credit of the county board fund, subject to the order of the County Board of Education. Under the terms of the act, this fund is to be pooled

and expended on a county-wide basis without regard to its resources, so that the funds of a district having a credit, produced by taxation in that district only, may be diverted from the uses for which they were collected and appropriated to the benefit of some other district or districts having a deficit.

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For the reasons stated in disposing of the preceding question, we think this constitutes a denial of due process of law and equal protection of laws to the respondents, who are citizens and taxpayers of a district which has such surplus. The taxpayers of the district are thus required to pay an indebtedness for schools incurred exclusively within and for the benefit of another school district.

While the provisions of § 4 of R269 appear to implement a scheme which the Supreme Court found unconstitutional in Moseley v. Welch, there is language in that case which prevents any absolute conclusions. Speaking about the scheme outlined in the above excerpts, the Court also stated, 'There is nothing to show that this bonded indebtedness is now being assumed on the theory of equalizing the opportunities for public education throughout the county.' However, the Act in question is clear that the funds for the proposed special account are initially school district funds and not a general county-wide levy. Section 4 states, 'The Treasurer of Orangeburg County shall deposit in a special account an amount equal to eight mills of the amount of tax monies collected for each school district in the county for FY 1979. . ..'

As stated at the outset of the Opinion, only the Courts of this State possess the necessary authority to declare an Act of the General Assembly unconsitutional; however, the Opinion of this Office is that § 4 of R269 is of suspect constitutionality for the reasons discussed herein.

With kindest regards,
Sincerely,

Paul S. League
Assistant Attorney General

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