1978 WL 34800 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
March 23, 1978

***1** Mr. Ralph E. Watkins, Jr.
Newberry County Public Schools
Post Office Box 116
Newberry, South Carolina 29108

Dear Mr. Watkins:
By a letter dated October 31, 1977, I advised you that, in my opinion, the board of trustees of the Newberry County School District (District) must continue to comply with the election requirements of Sections 49-71-10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976, (the 'School Bond Act'), until and unless legislation is enacted repealing those requirements or excepting the District therefrom. I reached that conclusion notwithstanding the language of Section 11-27-50.2, CODE OF LAWS OF SOUTH CAROLINA, 1976, that, if an election is required by statute but is not required by the provisions of new Article X of the State Constitution, then no such election need be held, which language I construed to apply only after the eight (8%) per cent debt limit is in effect, i.e., after November 30, 1982.

Upon reconsideration, however, I believe that I failed to give weight to the intent of the pertinent constitutional and statutory provisions and, for that reason, I wish to rescind that opinion. I believe that the intent of the language of Section 11-27-50.2 of the 1976 Code hereinabove referred to is to give effect to that part of Article X, Section 15(6) which authorizes a school district to incur bonded debt up to its January 1, 1976, constitutional debt limit for a period of five years after November 30, 1977, 'upon such terms and conditions as the General Assembly may . . . hereafter prescribe.' Section 11-27-50.2 does provide terms and conditions upon which a school district can incur bonded debt up to its January 1, 1976, debt limit until November 30, 1982, to wit:
If an election be prescribed by the provisions of such law, but is not required by the provisions of new Article X, then in every such instance, no election need be held . . .. [Emphasis added.]

The provisions of new Article X, Section 15(6) do not require an election in order for a school district to incur bonded debt up to its January 1, 1976, debt limit until November 30, 1982. Of course, the School Bond Act does require an election but that Act must be construed as having been amended by Section 11-27-50.2 so as to delete its election requirement.

The rationale behind the provision of new Article X, Section 15(6) which allows a school district to keep its January 1, 1976, debt limit for the next five years had to have been coupled with the intent to suspend the election requirement imposed by the School Bond Act; otherwise, there would have been no advantage in allowing the old debt limit to stand since a school district can presently incur any amount of bonded debt so long as it first conducts an approving election pursuant to Section 15(5) of new Article X. In other words, there would have been no reason for a school district to stay within its old debt limit for the next five years if it could not also, at the same time, ignore the election requirement imposed upon that debt limit by the School Bond Act because it can presently incur beyond its old debt limit if an election is first held.

***2** I, therefore, advise you that, in my opinion, the District need not comply with the election requirements of the School Bond Act in incurring bonded debt up to its January 1, 1976; thirty (30%) per cent limit until November 30, 1982. If it wants to incur debt beyond thirty (30%) per cent before that date, it must conduct an election pursuant to Article X,

Section 15(5). After that date, it can incur debt up to eight (8%) per cent without an election and, if it incurs debt beyond that amount, it must first hold an election.

I apologize for any inconvenience which my original letter may have caused.
With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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