

1978 WL 34754 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 8, 1978

**\*1 SUBJECT: School District; County Government**

(1) The board of trustees of the school district of Oconee County is not legally required to submit to the Oconee County Council the proposed school budget for the fiscal year, although the board of trustees may make the budget available for informational purposes.

(2) The Oconee County School District represents a distinct governmental entity, separate and apart from County departments and agencies, whose funding and operations are controlled by the General Assembly rather than the Oconee County Council.

(3) The board of trustees of Oconee County School District is charged by the General Assembly with the responsibility of maintaining and controlling school property, and the Oconee County Council cannot divest the board of trustees of this power and duty.

W. Jerry Fedder  
County Attorney

**QUESTIONS:**

1. Does the Oconee County Council have the legal authority to require the board of trustees of the school district of Oconee County to submit its proposed school budget for the upcoming fiscal year?
2. Does Oconee County Council have the legal authority to reduce the proposed level of funding requested by the board of trustees of the school district, and require the submission of a revised school district budget?
3. Does the Oconee County Council have the legal authority to exercise control over repair and maintenance of school buildings within Oconee County?

**STATUTES AND CASES:**

52 STAT. Act No. 383, § 10(16) (1961), as amended by 54 STAT. Act No. 429 (1965);

58 STAT. Act No. 1481 § 3 at p. 3461 (1974);

[S.C. Code Ann. § 4-9-70 \(1976\);](#)

[S.C. Code Ann. § 4-9-140 \(1976\);](#)

[S.C. Code Ann. § 59-19-90 \(1976\);](#)

[S.C. Code Ann. § 59-20-80 \(1976\);](#)

[Grey v. Vaigneur](#), 243 S.C. 604, 135 S.E.2d 227 (1962).

[Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975);

1974-75 Op. Atty. Gen. No. 4073, p. 150.

#### DISCUSSION:

1. [S.C. Code Ann. § 4-9-140 \(1976\)](#), as amended, sets forth the general requirements pertaining to the adoption of operating and capital budgets for County government. [Section 4-9-140](#) states, in pertinent part:

In the preparation of annual budgets or supplemental appropriations, council may require such reports, estimates and statistics from any county agency or department as may be necessary to perform its duties as the responsible fiscal body of the county.

While [§ 4-9-140](#) vests broad responsibilities upon County Council, it cannot be viewed in isolation from other provisions of the 'Home Rule' legislation, specifically [S.C. Code Ann. § 4-9-70 \(1976\)](#). This section provides, in part:

The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public school education, and all school districts, boards of trustees and county boards of education shall continue to perform their statutory functions in matters related thereto as prescribed in the general law of the state; . . .

**\*2** This section of the Home Rule legislation embodies the general principle of law recognized in this state that the county and the school district, even though co-extensive in area, are separate and distinct governmental, corporate entities and are separately subject to constitutional and statutory provisions applicable to each. See [Grey v. Vaigneur](#), 243 S.C. 604, 135 S.E.2d 227 (1962).

The 'Home Rule' constitutional provisions, and the legislation enacted thereunder, do not change the historical relationship previously existing between school districts and counties, but incorporate it into the law. This was recognized by the South Carolina Supreme Court in [Moye v. Caughman](#), 265 S.C. 140, 217 S.E.2d 36 (1975). In this case, the Court upheld the constitutionality of an act which changed the method of electing the boards of trustees of the Lexington County School Boards, and held that legislation dealing with the specific school district did not contravene that portion of Article VIII, Section 7, prohibiting the enactment of law for specific counties. The Court stated:

Creation of different provisions for school districts does not impinge upon the 'Home Rule' amendment because public education is not the duty of the counties, but of the General Assembly. The General Assembly has not been mandated by any constitutional amendment to enact legislation to confer upon the counties the power to control the public school system. To the contrary the command of new Article XI, Section 3, is 'the General Assembly shall provide for the maintenance and support of a system of free public schools'.

[217 S.E.2d at 37.](#)

Preparation and review of the school budget for Oconee County School District rests with the board of trustees of Oconee County School District, unless otherwise directed by the General Assembly. See 52 STAT. Act No. 383, § 10(16) (1961) as amended by 54 STAT. Act No. 429 (1965). Because the Oconee County School District constitutes a separate governmental entity, it is our opinion that the school district does not constitute a 'county agency or department', as those terms are used in [§ 4-9-140](#), from which County Council may require the submission of proposed budgets and reports.

This view is supported by the fact that the General Assembly has designated separate measures through the Education Finance Act to ensure the public dissemination of school budgets. [S.C. Code Ann. § 59-20-80](#) (effective July 2, 1978) states, in part:

Notwithstanding any other provision of law, each school board of trustees in this state shall annually make available to the general public its budget for that year . . .

None of these provisions, of course, are intended to inhibit cooperation between the school districts and local County government. Thus, the school district may make its budget available to County Council for informational purposes if this would be of assistance.

2. Further provisions of [§ 4-9-70](#) provide:

**\*3** Provided, further, that in any county where the General Assembly retained the authority to establish or limit the millage levied by school districts or levy a tax for educational purposes, on January 1, 1974, such authority shall continue in the General Assembly until such time as such authority may be transferred to the school district or the county governing body by act of the General Assembly . . .

On January 1, 1974, the General Assembly retained the authority to establish or limit the millage levied by the Oconee County School District:

A sufficient tax millage as set by the board of trustees of Oconee County, by appropriate resolution, is hereby levied upon all taxable property in Oconee County . . .; Provided, that the total millage assigned for operation of schools and payment of bonded indebtedness shall not exceed such millage applied for fiscal year 1973-74.

58 STAT. Act No. 1481, § 3 at p. 3461 (1974).

Therefore, until and unless the General Assembly transfers to the Oconee County Council by legislation its authority to establish the school tax millage, that authority remains in the General Assembly. See 1974-75 Op. Atty. Gen., No. 4073, p. 150. Therefore, the Oconee County Council may not exercise any control over the level of funding established for the school district, either by acting to reduce or increase the funding level, since that power continues to repose in the General Assembly.

3. As previously discussed, County Council and the board of trustees of the school district constitute separate governmental units, each with broad powers invested in them by the General Assembly. The Oconee County Council by its own actions may not delegate to itself authority and responsibility which the General Assembly by law has granted to another governmental entity. With regard to the relationship between the school districts and County government, the General Assembly has specifically declared in [§ 4-9-70](#) that no additional powers shall be devolved upon the County Council which have historically been exercised by the school districts in performing their statutory functions. [S.C. Code Ann. § 59-19-90 \(1976\)](#) specifically states that the board of trustees of the school district shall ‘take care of, manage and control the school property of the district’. 54 STAT. Act No. 429, § 2, at p. 759 (1965) specifically states that the board of trustees of the Oconee County School District shall ‘operate a building maintenance and repair program’. It is our opinion, therefore, that the Oconee County Council may not exercise any control over capital expenditures and maintenance for school property in Oconee County, since the General Assembly has specifically designated this authority to the Oconee County School District Board of Trustees.

CONCLUSION:

1. The Board of trustees of the school district of Oconee County is not legally required to submit to the Oconee County Council the proposed school budget for the fiscal year, although the board of trustees may make the budget available for informational purposes.

**\*4** 2. The Oconee County School District represents a distinct governmental entity, separate and apart from County departments and agencies, whose funding and operations are controlled by the General Assembly rather than the Oconee County Council.

3. The board of trustees of Oconee County School District is charged by the General Assembly with the responsibility of maintaining and controlling school property, and the Oconee County Council cannot divest the board of trustees of this power and duty.

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