

1975 S.C. Op. Atty. Gen. 53 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3981, 1975 WL 22279

Office of the Attorney General

State of South Carolina

Opinion No. 3981

March 3, 1975

***1 Re: Schools—270**

Mr. Robert L. Hawthorne
Attorney at Law
200 E. Pinckney Street
Abbeville, South Carolina 29620

Dear Mr. Hawthorne:

You, as attorney for Abbeville School District No. 60, request that we advise you as to whether or not the Abbeville County Board of Commissioners may increase taxes for school purposes without conducting a referendum.

Before the establishment in 1973 of the Board of Commissioners of Abbeville County [58 STAT. Act No. 32 § 1 at 29 (1973)], the General Assembly enacted each year an act to provide, among other things, for the levy of taxes for school purposes. See, e.g., 58 STAT. Act No. 538 at 899 (1973); 57 STAT. Act No. 647 at 1165 (1971). A frequent feature of each such enactment, referred to as the ‘County Supply Act,’ was the following provision:

The school board shall annually prepare a budget and recommend to the county auditor the amount of tax levy necessary to defray the cost of such budget. The board shall not recommend any tax levy increase without submitting the question to the people at a referendum and obtaining the approval of the people prior to such levy. . . . See, 58 STAT. Act No. 538 § 4 at 907 (1973); see also, 57 STAT. Act No. 647 § 4 at 1173 (1971).

The County Supply Act enacted in 1966, however, did not contain that feature. The act adopted in 1966, which had application only during the 1966–1967 fiscal year, stated simply that the Board of Trustees of School District No. 60 was to prepare a budget and was to certify to the county board of education the millage required for the budget's implementation. The act did not require a referendum to approve any increase in the taxes levied that year for school purposes. See, 54 STAT. Act No. 1170 § 3 at 2862 (1966).

With the establishment in 1973 of the Board of Commissioners, the enactment by the General Assembly of a County Supply Act is no longer necessary. The Board of Commissioners is authorized ‘to make appropriations and levy taxes therefor for corporate purposes and for educational purposes.’ 58 STAT. Act No. 32 § 6(5) at 31 (1973). Each county board which receives appropriations from the county is required by Section 8 of the last cited statute to submit to the Board of Commissioners its budget before October first of each year. No ordinance of the Board of Commissioners which levies a tax or appropriates funds shall be valid unless it shall have been read at three regular meetings of the Board and shall have been published in a newspaper having general circulation in Abbeville County at least two weeks prior to its adoption. Ibid. § 5 at 30.

There is no requirement which we can discover that any increase in the taxes levied for educational purposes be approved by the electorate in a referendum; however, there is Act No. 1028 of 1964, which reads in part:

‘Before levying taxes in School District No. 60 of Abbeville County, the board of trustees of the district upon approval of a majority of the County Legislative Delegation may call for advisory referendums to be held at such times as may

be determined by it in order to obtain an expression of the approval or disapproval from the qualified electors of the district concerning any such tax levy . . . ' 53 STAT. Act No. 1028 (1964).

*2 As you will note, the statute employs the word 'may' and not 'shall;' therefore, the Board of Trustees is not required to conduct a referendum on the issue of district tax levies. The Board, however, can hold a referendum if it desires and also has the approval of the legislative delegation of the county.

Moreover, the referendum is merely an 'advisory' one. Any referendum conducted pursuant to the 1964 statute has as its sole purpose the obtaining of 'an expression of the approval or disapproval from the electors' regarding any tax levied within School District No. 60. Since the referendum is merely advisory, an expression of disapproval cannot prevent the levying of a tax within the district. The referendum is useful only in determining popular sentiment concerning school district tax levies. The district electorate may register their disapproval in an advisory referendum of a tax levy, but the tax, nonetheless, can be levied by the Board of Commissioners upon the property within the school district.

In your letter to us, you refer to Section 21-911 of the Code. That statute, we think is inapplicable to tax increases. Section 21-911, by clear and unambiguous terms, applies only to 'additional taxes' levied for school purposes in a county and not to 'increases in taxes' levied for school purposes within a school district. An 'additional tax' is a 'supplementary tax' and not a 'tax increase.'

The Board of Commissioners, therefore, may increase taxes for school purposes without conducting a referendum.
Best wishes,

C. Tolbert Goolsby, Jr.

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