

1972 S.C. Op. Att. Gen. 16 (S.C.A.G.), 1972 S.C. Op. Att. Gen. No. 3236, 1972 WL 20384

Office of the Attorney General

State of South Carolina

Opinion No. 3236

January 1, 1972

**\*1 Proper legislation can be enacted creating a County Budget and Control Board for the purpose of centralizing authority now held by school and public service districts.**

Senator

District 14

Your letter of November 24, 1971, to Mr. McLeod has been referred to this writer for a reply. You have asked for an opinion on the creation of a County Budget and Control Board for Charleston County. The Board would be a central authority which would set the millage for the county as well as for school districts and public service districts. It would have final approval of all budgets and all disbursements for school, public service and county purposes.

Article 7, Section 11 of the South Carolina Constitution has been repeatedly construed to give the General Assembly complete control over the government and other internal affairs of the counties of the State. *Bynum v. Barron*, 227 S. C. 339, 88 S. E. 2d 67 (1955). Under this Section the legislature may grant to the counties power to discharge governmental functions. *Park v. Greenwood Co.*, 174 S. C. 35, 176 S. E. 870 (1934). Generally speaking, the counties function as instrumentalities of the State for purposes of political organization and local administration. *Parker v. Bates*, 216 S. C. 52, 56 S. E. 2d 723 (1949).

Article 10, Section 5 of the Constitution authorizes the General Assembly to vest the power to levy taxes in the municipal authorities of counties. *Green v. West*, 161 S. C. 161, 159 S. E. 23 (1931). However, this authorization to tax is limited by Article 10, Section 6 to include only taxation for certain enumerated purposes.

With regard to school districts, the case of *Moseley v. Welch*, 209 S. C. 19, 39 S. E. 2d 133 (1946) is very relevant. There a statute adopting a county unit plan of education which left intact existing school districts was challenged as unconstitutional. The Act required the trustees of the several existing school districts in the county to submit a budget to the County Board of Education for the operation of the schools within the districts for the ensuing fiscal year. The Act required the trustees to meet with the Board for the purpose of adjusting any differences between the proposed budgets and that deemed proper by the Board. The Board's findings were conclusive. The Act also directed the county auditor to levy annually a sufficient county-wide tax to meet the cost of the current operation of the schools. The constitutionality of the Act was attacked on the grounds; (1) that it usurped the powers of the various school districts by transferring them to a central authority, (2) that it interfered with and diminished the school taxes and the method of apportionment of such taxes among the various school districts, and (3) that the Act took away the rights of each school district to levy taxes for the support of the schools in that particular district.

The South Carolina Supreme Court held that the transfer of authority vested in the district trustees to the County Board did not run afoul of any constitutional inhibition, and that there was no inherent right of local self-government of schools which is beyond legislative control. The Court stated, in approving the county-wide tax assessment, that there is no constitutional provision directing that county school taxes be apportioned in proportion to enrollment among the school districts. However, a portion of the Act which required the county to assume the outstanding indebtedness of the several school districts was declared unconstitutional because it would have resulted in certain taxpayers being required to pay the indebtedness incurred for school districts from which they had received no benefits.

\*2 The *Moseley* case, therefore, lends support to the creation of the County Budget and Control Board which you propose insofar as school districts are concerned. Although no case has been found on the central control of public service districts, there appears to be no reason why the holding in the *Moseley* case would not be equally as applicable to other county corporate authorities.

It is, therefore, the opinion of this office that proper legislation can be enacted creating a County Budget and Control Board for the purpose of centralizing authority now held by school and public service districts; however, any legislation must necessarily comply with other constitutional provisions such as Article 3, Section 34 which prohibits special legislation, and Article 1, Section 8 which prohibits the impairment of contracts. It should be noted that a bond issue creates a contract, the obligation of which cannot be impaired. *Dove v. Kirkland*, 92 S. C. 313, 75 S. E. 503 (1912).

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