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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

January 29, 2002

The Honorable Ronald P. Townsend  
Chairman, Anderson County Legislative Delegation  
Room 429, Blatt Building  
Columbia, SC  
By Delivery

Dear Representative Townsend:

You have requested an informal opinion regarding the constitutionality of the Anderson County Board of Education as established by Act. No 510, 1982 SC Acts 3420. You have posed three questions each of which is set forth and discussed below.

1. "... [I]s the composition of the Anderson County Board of Education in violation of the 'one person one vote' requirement of the Equal Protection Clause of the United States Constitution?"

In response to this question, I am enclosing a copy of the an August 1, 1988 opinion of this Office which concluded that the countywide election of members of the County board who must live in various school districts of Anderson County appears to be valid on its face even though those districts vary as to population.

2. "[I]s the Anderson County Board of Education's levying of taxes in violation of art. X §5 of the South Carolina Constitution?"

Article X§ 5 prohibits taxation "without the consent of the people or their representatives lawfully assembled." If your concern is with the method of the election of the Board in relation to this provision, the matter appears to be settled by the above referenced 1988 Opinion although that Opinion did not specifically address art. X §5. If you have a different question about this provision, please let us know.

*Respectfully,  
Charlie Condon*

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3. “[I]s the Anderson County board of Education’s levying of separate millage rates on the property of the different school districts in violation of . . .” art X § 6?

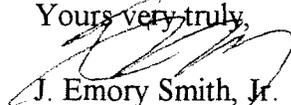
Article X § 6 states that “[p]roperty tax levies shall be uniform in respect to person and property within the jurisdiction of the body imposing such taxes . . .” Pursuant to Act No. 269, 1989 SC Acts 1655, as amended by Act No. 581, 1994 S.C. Acts 6025, the different school districts in Anderson County recommend to the Board the amount of tax millage needed to defray the cost of the budgets the districts prepare, and the Board then determines the millage. If the millage rates to which you are referring are imposed only within the districts for the purposes of those districts then they would not appear to violate art. X § 6 under the provisions of the Anderson legislation which is entitled to a presumption of constitutionality (*Robinson v. Richland County Council*, 293 S.C. 27 358 S.E. 2d 392 (1987)). Furthermore, our State’s Education Finance Act includes local funding based upon the taxpaying ability of each district. *See also* S.C. Code Ann. §§59-20-40(e) (1990)(Education Finance Act requirements); 59-21-1030 (Supp. 2000)(minimum local financial effort requirements). If the millage rates are instead variations in rates for a single countywide levy, please let me know as I will need additional information. *See Ops. Atty. Gen.* (October 30, 1984)(Copy attached).

For your further information, I am enclosing a copy of a prior opinion related to the allocation of the revenue from a countywide millage which appears to address a different question. *Ops. Atty. Gen.* (August 16, 2000). I believe that you already have a copy of this Opinion.

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,

  
J. Emory Smith, Jr.

Assistant Deputy Attorney General