

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

June 6, 1994

Mary Thornley, Ed.D., President
Trident Technical College
Post Office Box 118067
Charleston, South Carolina 29423-8067

Dear Dr. Thornley:

By your letter of May 20, 1994, you have requested the opinion of this Office as to whether the Charleston County Legislative Delegation should be approving the entire budget of Trident Technical College rather than only Charleston County's portion of the tax revenue budget. It is our understanding that traditionally, the legislative delegation has approved only its county's portion of the tax revenue budget. In particular, you are seeking an interpretation of S.C. Code Ann. § 59-53-440 (revised 1990), which provides:

The [Berkeley-Charleston-Dorchester] Area Commission shall submit a budget for the ensuing fiscal year on or before February fifteenth of each year for approval by each of the respective legislative delegations from Berkeley, Charleston and Dorchester Counties.

By way of background, we observe that Trident Technical College is one of the state's sixteen technical education colleges, which colleges are within the jurisdiction of the State Board for Technical and Comprehensive Education. As such, Trident Technical College is governed by general legislative provisions for the State Board and the colleges' governing boards, § 59-53-10 *et seq.*, and by special legislation for Trident Technical College, § 59-53-410 *et seq.* Section 59-53-440 is among those latter statutes, having been adopted as a part of Act No. 841 of 1962, as amended by Act No. 79 of 1963.

A review of statutes relative to the State Board concerning fiscal matters of the area commissions reveals a statute to be considered. Additional powers and duties of the State

Dr. Thornley
Page 2
June 6, 1994

Board are delineated in § 59-53-50. Subsection (5) provides that the Board shall "establish a minimum and maximum tuition fee with the approval of the area commissions." No other entity (i.e., legislative delegation) is to approve tuition fees, increases, or decreases. Subsection (7) authorizes the State Board and the appropriate area commission to approve new facilities or modification of existing facilities; no other entity is involved in the approval process.

Each of the area commissions is governed by a general and comprehensive legislative scheme, including §§ 59-53-52, 59-53-53, and other statutes. Powers and duties of the area commissions are outlined in § 59-53-52 particularly and include the authority to acquire sites and construct facilities (subsection 3); to acquire all kinds of real and personal property by gift, purchase, or otherwise (subsection 4); to expend any funds received in any manner consistent with their approved budget (subsection 12); to apply for, receive, and expend moneys from various sources (subsection 14); and so forth. No other entity is required to approve these actions. In addition, § 59-53-52 (16) requires area commissions to "[p]repare and submit budgets for review by the county governing bodies participating in the funding of the individual institutions and to the Board for approval Local tax revenue budgets shall require the approval of the county governing bodies[.]" (Emphasis added.) This section distinguishes between review and approval and clearly specifies that the local governing body (i.e., the legislative delegation in Charleston County and the county councils in Berkeley and Dorchester counties) has responsibility for approval of the local tax revenue budget. Borrowing by area commissions is governed by § 59-53-53, which authorizes area commissions to borrow for capital improvements and to establish a special fee to repay the loan. There is no requirement that the local governing bodies approve the loan or the fee to repay the loan. As to funding for capital improvements, see § 59-53-150 et seq., which statutes do not require review or approval by local governing bodies.

In addition to the foregoing general law applicable to Trident Technical College, specific legislation is found at § 59-53-410 et seq.; as previously stated, § 59-53-440, quoted above, is part of that local legislation. When viewed in isolation, § 59-53-440 arguably could be interpreted as requiring each county legislative delegation to approve Trident Technical College's entire budget. When read as a part of the entire statutory scheme, as must be done with statutes in *pari materia*, Fishburne v. Fishburne, 171 S.C. 408, 172 S.E.2d 426 (1934), it is clear that approval of the Charleston County Legislative Delegation is not required for many of items that comprise income or expenditures under Trident Technical College's complete budget; it would be incongruous and tantamount to a veto of certain actions if the Delegation, as a local governing body, were to be construed as having the authority to approve the entire budget rather than that part of the budget related to Charleston County's tax revenues.

By comparison, Act No. 571 of 1965 required that the Darlington County Board of Education "examine the itemized budget" of Florence-Darlington Technical College and approve it, such approval to constitute the authority and direction to the county auditor to levy the necessary millage. By an opinion dated November 9, 1987, this Office advised that, due to the language of that act, mandatory or automatic approval of the budget by the Board of Education would not be consistent with the review powers granted by the act. The act for Florence-Darlington Technical College contained no limiting language like the last sentence of § 59-53-440 as to Trident Technical College. Had the legislature intended a more rigorous review process as to Trident Technical College, language similar to that in Act No. 571 of 1965 could have been added, or the last sentence of § 59-53-440 could have been omitted.

We further observe that legislation relative to the various technical colleges was adopted on a piece-meal basis. Most of the technical colleges do not have a statute codified in Chapter 53 of Title 59 which would correspond to § 59-53-440.¹ The statutes which provide for the powers and duties of all area commissions were adopted in 1976, by Act No. 654, as amended. Of the various acts adopted for the technical colleges subsequent to 1976, none contains language similar to § 59-53-440 as codified in Chapter 53 of Title 59. It could be argued that § 59-53-52(16) makes such a statute unnecessary. As § 59-53-52(16) is a later expression of legislative will, it could be argued that perhaps § 59-53-440 is no longer necessary. Feldman v. South Carolina Tax Comm'n, 203 S.C. 49, 26 S.E.2d 22 (1943) (last expression of the legislative will is the law). However, § 59-53-440 has apparently not been expressly repealed, and repeal by implication is not favored. Strickland v. State, 276 S.C. 17, 274 S.E.2d 430 (1981).

One constitutional concern must also be discussed. Article I, § 8 of the State Constitution provides that

In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.

¹ An exception is Chesterfield-Marlboro Technical Education College. See § 59-53-550.

Dr. Thornley
Page 4
June 6, 1994

By vesting certain budgetary approval in the legislative delegation, thus causing the delegation as part of the legislative branch to exercise functions of an executive nature, § 59-53-440 could be viewed as violative of Art. I, § 8. At least two judicial decisions provide guidance, such decisions having invalidated legislation which required the county legislative delegation to approve or disapprove any tax increase adopted by a school board of trustees. Gunter v. Blanton, 259 S.C. 436, 192 S.E.2d 473 (1972); Aiken County Board of Education v. Knotts, 274 S.C. 144, 262 S.E.2d 14 (1980). As stated in Gunter, "The Act [relative to Cherokee County examined therein] does not and can not authorize the members of the delegation to participate in this determination as legislators, for they may exercise legislative power only as members of the General Assembly." Id., 259 S.C. at 441.

The court in Aiken County quoted that portion from Gunter and continued:

As a general rule, the Legislature may not, consistently with the constitutional requirement here involved, undertake to both pass laws and execute them by setting its own members to the task of discharging such functions by virtue of their office as legislators. [Cite omitted.] The Legislature may properly engage in the discharge of such functions to the extent only that their performance is reasonably incidental to the full and effective exercise of its legislative powers. ... As the functions of the Legislative Delegation in this instance are not incidental to or comprehended within the scope of legislative duties, the separation of powers doctrine as provided by Article I, Section 8 has clearly been violated.

Aiken County, 274 S.C. at 149-150.

Section 59-53-440 would be entitled to the presumption of constitutionality and may be followed unless or until a court should direct otherwise. However, it is possible that § 59-53-440 could be found to be violative of Art. I, § 8 if a challenge should be made thereto.

In conclusion, it is the opinion of this Office that the Charleston County Legislative Delegation is to approve the Charleston County tax revenue budget rather than the entire budget of Trident Technical College.

Dr. Thornley
Page 5
June 6, 1994

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions