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The State of South Carolina



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February 5, 1993

The Honorable J. Roland Smith
Member, House of Representatives
416B Blatt Building
Columbia, South Carolina 29211

Dear Representative Smith:

By your letter of January 26, 1993, you had asked whether a constitutional amendment would be required to permit the General Assembly to adopt legislation allowing school districts to incur bonded indebtedness, without a referendum, in excess of eight percent of the assessed value of taxable property within the school district.

Article X, Section 15 of the state Constitution authorizes school districts to incur bonded indebtedness in the manner and upon the "terms and conditions as the General Assembly shall prescribe by law within the limitations set forth in this section." Art. X, § 15(1) (emphasis added). The limitation on indebtedness to be incurred without a referendum is expressed in Art. X, §15(c) as "not exceeding eight percent of the assessed value of all taxable property of such school district" with certain conditions imposed by the Constitution and upon whatever terms and conditions the General Assembly may impose.

The legislative power of the State is conferred upon the General Assembly; however, that power is subject to whatever restrictions or limitations may be imposed by the Constitution. Clarke v. South Carolina Public Service Authority, 177 S.C. 427, 181 S.E. 481 (1935); Massey v. Glenn, 106 S.C. 53, 90 S.E. 321 (1916); State v. Aiken, 42 S.C. 222, 20 S.E. 221 (1894); Mauldin v. City Council, 42 S.C. 293, 20 S.E. 842 (1895). Because the Constitution contains an express limitation of eight percent when a referendum is not held respecting the incurring of bonded indebtedness, the General Assembly could not permit, by legislation alone, the incurring of bonded indebtedness by

REQUEST LETTER

The Honorable J. Roland Smith
Page 2
February 5, 1993

a school district in excess of the eight percent limitation without a referendum; a constitutional amendment would be required.

With kindest regards, I am

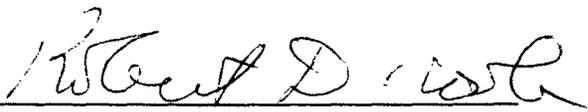
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



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