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August 1, 1988

The Honorable John W. Tucker, Jr.
Member, South Carolina House of
Representatives
District No. 6 - Anderson County
Route 1, Highway 81 North
Anderson, South Carolina 29621

Dear Representative Tucker:

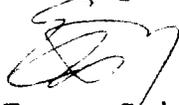
You have requested the advice of this Office as to the constitutionality of the election process for the Anderson County Board of Education (County Board) pursuant to Act 510, Acts and Joint Resolutions of South Carolina, 1982. Under that procedure, the Board is composed of seven members of which all members are elected by the countywide electorate although each of five of the members must reside in a different school district of Anderson County. According to the information provided by you, the school districts are not equivalent in population. Apparently, your question is whether the Act properly requires residency of five of the members in districts of varying population although they are elected by the countywide electorate.

On its face, this procedure appears to be valid in that the United States Supreme Court found no "invidious" discrimination in a plan that provided that each of seven members of an eleven member city council must reside in each of the seven burroughs of differing populations in that city although all council positions were elected by the citywide electorate. Dusch V. Davis, 387 U.S. 112, 18 L.Ed.2d 656, 87 S.Ct. 1554 (1967). Therefore, under the authority of Dusch, 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; however, this Opinion does not address the validity of the application of this plan to any particular factual circumstances of Anderson County that might exist other than the general variance of the total population in that addressing factual issues does not come within the scope of Opinions of this Office. (Ops. Atty. Gen., December 12, 1983).

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If you have any questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/jps

REVIEWED AND APPROVED BY:



ROBERT D. COOK
Executive Assistant for Opinions