

1981 WL 158164 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 24, 1981

\*1 The Honorable H. Parker Evatt  
Second Vice-Chairman  
Medical, Military, Public and Municipal Affairs Committee  
House of Representatives  
Post Office Box 11867  
Columbia, South Carolina 29211

Dear Representative Evatt:

You have requested the opinion of this office as to whether proposed legislation to create a school district within the South Carolina Department of Corrections would be violative of [Article 3, Section 34\(IV\) of the Constitution of South Carolina \(1895\)](#), as amended (subsection IV). This part of the Constitution prohibits local or special laws concerning the incorporation of school districts; however, reading sub-section IV with reference to current and former constitutional provisions indicates that it does not include the kind of district to be created under the proposed law. [Sutherland Statutory Construction](#), Vol. 2A, §§ 49.01 and 51.02; 16 Am. Jur. 2d [Constitutional Law](#) § 90.

Sub-section IV applies to completely different political entities from that to be set up in the proposed bill. It was originally contained in sub-section V of [Article III § 34 of the Constitution of 1895](#), and Article XI § 5 of that constitution directed that the legislature divide the counties into school districts within certain maximum and minimum limitations on land area. Thus, the school districts contemplated by [Article III](#) would seem to be those in Article XI § 5 which constitute territorial divisions of counties. [Arnette v. Ford](#) 129 S.C. 526, 125 S.E. 138 (1924)<sup>1</sup> supports this conclusion by its reliance on an apparently similar analysis in holding that [Article III § 34\(IV\)](#) applies only to 'common school districts' and not to 'high school districts'. Although Article XI § 5 was entirely repealed in 1954 and its provisions for school district division were not reinstated,<sup>2</sup> the original meaning of school districts would not have been changed. The legislature has also defined 'school districts'<sup>3</sup> and provided in the general law for their alteration or division in a manner which is consistent with this interpretation of the Constitution. §§ 59-1-160 and 59-17-10, [et seq.](#) of the Code of Laws of South Carolina (1976). In contrast to these statutory and constitutional descriptions of school districts, 'The Palmetto School District No. 1', which encompasses a state agency, would possess none of the geographic, demographic or economic aspects of the school districts comprising portions or entireties of counties. Thus, even though it is labeled as a 'school district', it does not appear to come within the scope of the districts reached by sub-section IV.

This conclusion is further supported by the fact that prior and current constitutional and statutory provisions provide public education primarily for school children. Constitution of 1895, art. XI § 5; Constitution, as amended, [art. XI § 3](#); § 59-63-20. [But see](#) § 59-43-10 [et seq.](#) A school district devoted entirely to serving prisoners would not seem to have been contemplated by the framers of sub-section IV. Moreover, that inmates constitute a distinct body for educational purposes is recognized in Article XII § 2 which directs the General Assembly to provide for their education.

\*2 The opinion of this office is that the proposed bill would not violate [Article III § 34\(IV\)](#). For your information, I am enclosing a copy of a previous opinion of this office (January 20, 1981, by J. Emory Smith, Jr., Assistant Attorney (General), which considered the relationships between the proposed legislation and the Education Finance Act (§ 59-26-10, [et seq.](#)). If we may be of further assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.  
Assistant Attorney General

Footnotes

- 1 Other cases pertaining to sub-section IV have generally been limited to considering whether laws pertaining to certain traditional school districts or high school districts come within its terms. See [Smythe v. Stroman](#), 251 S.C. 277, 162 S.E.2d 168 (1968).
- 2 Act 653, Acts and Joint Resolutions of South Carolina, 1954. Article XI § 5 also provided for free public schools and that part of it was reinstated as [Article XI § 3](#) when a constitutional amendment was ratified by Act 42 of 1973.
- 3 ‘. . . [A]ny area or territory comprising a legal entity, whose sole purpose is that of providing free school education, whose boundary lines are a matter of public record, and area of which constitutes a complete tax unit.’

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