

1977 WL 37205 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 17, 1977

*1 The Honorable Irene K. Rudnick
Member
House of Representatives
Aiken County
Box 544
Aiken, South Carolina 29801

The Honorable Marion D. McGowan
Member
House of Representatives
Aiken County
Box 308
Warrenville, South Carolina 29851

The Honorable William A. Reel, Jr.
Member
House of Representatives
Aiken County
205 Lynch Street
Edgefield, South Carolina 29824

Sirs and Madam:

Your letter of June 17 requests information on whether or not those Members of the Aiken County Legislative Delegation who are not residents of Aiken can vote on a school millage tax increase.

Mrs. Rudnick's previous letter of June 9 referred to Act No. 1238 of 1974 (74 Acts 2875) which provides that the Board of Education shall prepare an annual budget and recommend to the County Auditor the county tax levy necessary for such budget. The Act further provides:

'[I]f a majority of the members of the board conclude that the tax millage for operating school purposes in the district should be increased, they shall submit a request for such increase to the members of the General Assembly residing in Aiken County, and if a majority of the members approve such increase, the auditor shall levy and the treasurer shall collect the additional millage to provide for such increase.'

It is my opinion that the foregoing proviso is unconstitutional for the reason that it vests in the Legislative Delegation executive functions and thus offends the separation of powers provision of our Constitution ([Gunter v. Blanton, 259 S.C. 436, 192 S.E.2d 473](#)).

It is my opinion also that the provision is unconstitutional in that it departs from the statutory provision governing references to members of county legislative delegations, as set forth in Section 30-203.1, Code of Laws, 1962.

You have not raised the question of constitutionality, however, and in this view, presuming the constitutionality of the statute and following the literal provisions of the statute, only those Members residing in Aiken County would be able to vote upon the tax increase to which the statute refers.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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