

1977 WL 37442 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 10, 1977

*1 Representative John M. Rucker
1219 Boyce Street
Newberry, South Carolina 29108

Dear Representative Rucker:

You have requested an opinion from this Office as to whether or not you, as a member of the South Carolina House of Representatives from Newberry County, or the House legislative delegation from Newberry County (consisting of yourself and Representative Eugene S. Blease) is to approve the Newberry County Board of Education's levy of taxes sufficient to raise the amounts necessary to fulfill the needs of the schools of the County. In my opinion, the House legislative delegation from Newberry County (consisting of yourself and Mr. Blease) is to approve the levy if that levy varies by more than four mills from the previous year's millage, pursuant to the following provisions of Act No. 1117 of 1966:

[i]n Newberry County the county board of education shall determine annually the needs of the schools of the county, and the board shall annually, subject to the approval of a majority of the county board of commissioners and the House Legislative Delegation, levy upon all of the taxable property in the county tax sufficient to raise the amounts necessary to fulfill the needs of the schools of the county. If such levy does not vary more than four mills from the previous year, such approval shall not be necessary. 54 STAT. Act No. 1117, § 3 at 2781 (1966). [Emphasis added.]

You have also inquired as to whether or not, pursuant to the authority hereinabove cited, you are authorized to approve a five-mill tax levy by the Newberry County Board of Education for a four-year period for capital improvements. In my opinion, the tax levy contemplated by the provisions of Act No. 1117 of 1966 is an annual one since the determination of the needs of the County's schools is to be made annually (' . . . the county board of education shall determine annually the needs of the schools of the county, . . .'). I do not believe that the County Board of Education can obligate itself to a four-year tax levy in order to finance capital improvements, at least not without incurring bonded indebtedness. If bonded debt is incurred, then the provisions of Sections 59-71-10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976, become applicable and an election is required.

A question has also been raised as to whether or not the Newberry County Council can supply the amount needed by the Newberry school system from general county funds as opposed to school revenues. Until December 1, 1977, at which time the provisions of new Article X will become effective, Newberry County can utilize the provisions of the 'County Bond Act' [§§ 4-15-10 et seq., CODE OF LAWS OF SOUTH CAROLINA, 1976], issue general obligation bonds of the County and pay the proceeds over to the school authorities under the holding of [Gray v. Vaigneur](#), 243 S.C. 604, 135 S.E. 229 (1964). You should note that the election requirement imposed by the provisions of the County Bond

*2 Act has been suspended for the year 1977. See, Act No. 75 of 1977 (1977 Acts and Joint Resolutions Advance Sheet No. 2 dated July 28, 1977). After December 1, 1977, there is a question as to whether or not the County can continue the practice authorized by [Cray v. Vaigneur](#) inasmuch as Section 14(4) of new Article X permits the incurring of general obligation debt only for a purpose 'which is a public purpose and which is a corporate purpose of the applicable political subdivision' [emphasis added]. While education is clearly a public purpose, it may not be a corporate purpose of a county [see, e.g., § 4-9-30(5), CODE OF LAWS OF SOUTH CAROLINA, 1976] and, therefore, a county council may no longer be able to incur debt for educational purposes to be transferred to the use of the county's school authorities. This apparent intent to alter the past practice countenanced by [Gray v. Vaigneur](#) is borne out by new Article X's failure to impose ceilings on the bonded debt limits of political subdivisions if the electors approve the incurring thereof by referendum. See, e.g., S.C. CONST. art. X, § 15(5).

In any event, my opinion is that your authority as a member of the House legislative delegation from Newberry County to approve a school tax levy which varies by more than four mills from last year's levy does not empower you to approve a five-mill four-year levy for capital improvements.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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