

1979 WL 42982 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 4, 1979

***1 SUBJECT: SCHOOL DISTRICTS—TRUSTEES**

No statutory authorization exists, providing for compensation of members of the Board of Trustees for School District No. 2 in Sumter County.

Honorable David McInnis
Member
House of Representatives

QUESTION PRESENTED:

May the Board of Trustees of School District No. 2 in Sumter County authorize an increase in board members' salaries, or must the Sumter County Legislative Delegation seek legislation in order to provide for an increase in such salaries?

CITATION OF AUTHORITIES:

Constitution of South Carolina, Article X, 38; 78 C.J.S., Schools and School Districts § 118; S.C. School Co. Act No. 377, Acts and Joint Resolutions of S.C., 1977; [Moye v. Caughman](#), 265 S.C. 140, 217 S.E. 2d 36 (1975); [Walpole v. Wall, County Superintendent of Education](#), 153 S.C. 106, 150 S.E. 760 (1929).

DISCUSSION

The question presented asks whether the Board of Trustees for School District No. 2 in Sumter County possesses authority to grant itself a salary increase, or whether such salary increase must be effected by legislation introduced by the Sumter County Legislative Delegation? In order to answer the question presented herein, a threshold question is presented as to whether any salary is authorized for members of the subject Board of School Trustees. The [Constitution of South Carolina, Article X, § 8](#), is entitled 'Payment from Treasuries', and states:

Money shall be drawn from the Treasury of the State or the Treasury of any of its political subdivisions only in pursuance of appropriations made by law.

This Constitutional provision clearly dictates that money drawn from the State Treasury or that of a political subdivision, which includes local school districts, can be accomplished only following lawful authorization.

A review of the Code of Laws of South Carolina, 1976, as amended, as well as pertinent local laws, fails to reveal any authority, enabling members of the Sumter County School District No. 2 Board of Trustees to receive a salary. Title 59, Chapter 19, Code of Laws of South Carolina, 1976, as amended, which is part of the 'South Carolina School Code' dealing with 'School Trustees' contains no provision whatever, providing for salaries for members of school district boards of trustees. [§ 59-19-90, Code of Laws of South Carolina](#), 1976, as amended, entitled 'General Powers and Duties of School Trustees', does not include among the general powers of school trustees the authority to pay themselves a salary. Act No. 377, Acts and Joint Resolutions of South Carolina, 1977, abolished the Sumter County Board of Education

and devolved all powers and duties of said County Board upon the School Districts of Sumter County. Act No. 377, of 1977, however, does not provide for salaries for members of boards of school trustees.

The threshold question herein is addressed in 78 C.J.S., Schools of School Districts, § 118, which states in part:

*2 The right of members of School District Boards, or a Board of Education, to compensation must rest on express provision therefore, and no right to compensation will be implied because of the fact that services were rendered. Accordingly, they cannot legally claim or recover compensation for their services where none is provided for or authorized by statute, or where it is expressly provided that they shall serve without compensation; in this latter instance, except insofar as such action is expressly permitted by statute, a board cannot indirectly provide compensation for its members by electing them to the offices of secretary and treasurer, which offices the board would otherwise be empowered to compensate, or by employing them in some other capacity.

While this question has apparently not been addressed by the Supreme Court of South Carolina, the question has been summarily addressed in a previous Opinion of this office. In a published Opinion, dated June 25, 1926, advice was rendered to the effect that no law could be found authorizing the payment of members of a County Board of Education for their services. Further, no such authorization is found in the 'South Carolina Education Finance Act of 1977'. While not actual authority for the conclusions reached in this Opinion, notice should be taken that for approximately twenty-eight (28) counties in South Carolina there exists special legislation authorizing a salary, payment of expenses, or both to members of county school boards or local school district boards of trustees. Thus, a sizable number of county boards or school districts have heretofore seen the necessity of seeking legislation of expressly provide for a salary or expenses to members of local boards.

Education in South Carolina, even in view of the relatively recent 'home rule' legislation, is essentially a state matter. See Moye v. Caughman, 265 S.C. 140, 217 S.E. 2d 36 (1975). The South Carolina General Assembly may, without running afoul of state constitutional prohibitions, provide for the organization of local school districts and boards. Inferentially, the matter of salaries for members of school district boards of trustees appears to be within the province of the Legislature. The following quotation demonstrates the relation between the Legislature and school districts:

The objection that the old board of trustees, or some of them, have been legislated out of office by the Act in question is without force. Such trustees are legislative, not constitutional, officers whose terms may be ended or extended at the will of the Legislature. Section 6, At. 11, Const. 1895; Section 2601, Vol. 3, Code of 1922.

The answer to the thirteenth objection interposed is that the matters of taxation and administration in school districts is almost entirely within legislative control, and unless the Act complained of clearly contravenes some constitutional limitation the Court is bound to hold it valid.

The power of the Legislature is always plenary; and the Constitution expressly clothes it with the power to appoint or authorize the appointment of school trustees.

*3 Walpole v. Wall, Co. Superintendent of Education, 153 S.C. 106, 150 S.E. 760 (1929)

CONCLUSION:

Based upon the foregoing discussion and citation of authorities, no provision of law exists authorizing the payment of salaries to members of the Sumter County School District No. 2 Board of Trustees. In order to authorize such salaries, special legislation must be enacted by the South Carolina General Assembly specifically authorizing such salaries.

Paul S. League
Assistant Attorney General

1979 WL 42982 (S.C.A.G.)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.