

1979 WL 43132 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 25, 1979

*1 Honorable Dan Winstead
Member
House of Representatives
2441 Bengal Road
Charleston, South Carolina 29405

Dear Representative Winstead:

You have requested the opinion of this Office as to several questions concerning the effect of 'home rule' legislation on Charleston County School Board matters. I will respond to your questions in the order in which they were posed.

1. Is the power to approve school budgets, which power as given to the Charleston County Legislative Delegation by Act No. 340 of 1967 [55 STAT. 470 (1967)], automatically transferred to the Charleston County Council by home rule?

In my opinion, that power has not been automatically transferred to the Charleston County Council. [Section 4-9-70, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, provides in part:

The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public school education, and all school districts, boards of trustees, and county boards of education shall continue to perform their statutory functions in matters related thereto as prescribed in the general law of the State . . .

2. Can the power to approve school budgets be transferred to the Charleston County Council by special act?

In my opinion, that power can be transferred to the Charleston County Council by special act of the General Assembly. While the General Assembly is prohibited by the [Constitution \[Art. VIII, Section 7\]](#) from passing special laws pertaining to counties, the South Carolina Supreme Court has held that that prohibition does not apply to educational matters. [Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 \(1975\)](#). Therefore, it appears that a special act can be passed which will transfer to the Charleston County Council the power to approve school budgets. This opinion is further strengthened by language in [Section 4-9-70 of the 1976 Code](#), which goes beyond the above-quoted provision of that statute to state: . . . Provided, further, that in any county where the General Assembly retained the authority to establish or limit the millage levied by school districts or levy a tax for educational purposes, on January 1, 1974, such authority shall continue in the General Assembly until such time as such authority may be transferred to the school district or the county governing body by act of the General Assembly . . . [Emphasis Added.]

I would point out, however, that there is at least a possibility of doubt that the General Assembly can relinquish its control over school districts in favor of county councils, inasmuch as there is language in the [Moyd case](#) which states that 'public education is not the duty of the counties, but of the General Assembly.' [Moye v. Caughman, 265 S.C. 140, 143.](#)

3. If the power can be so transferred, is House Bill No. 2773 adequate for the purpose?

In my opinion, the provisions of House Bill 2773 appear to be sufficient and proper for their intended purpose.

With kind regards,

*2 Karen LeCraft Henderson
Senior Assistant Attorney General

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