



ALAN WILSON
ATTORNEY GENERAL

March 24, 2017

The Honorable Roger K. Kirby, Member
South Carolina House of Representatives
314-D Blatt Building
Columbia, SC 29211

Dear Representative Kirby:

Attorney General Alan Wilson has referred your letter dated March 21, 2017 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter):

"The purpose of this letter is to request an Attorney General's Opinion clarifying the legality of proposed legislation. By way of background, the attached proposed legislation extends the term of a Florence County School District Number Three board member from three years to four years and requires that the election for the board be held at an even-numbered year general election. Also, to stagger the terms of the board quickly, the legislation proposes cutting short the term of certain members that were elected to a three year term. [] Based on your interpretation of the proposal or any prior opinions of the Attorney General's Office, does the proposal suffer from any constitutional defects?"

Law/Analysis:

As you are aware, the Attorney General advises the General Assembly "in the arrangement and preparation of legislative documents and business" and regarding "questions of law submitted to him...." S.C. Code Ann. § 1-7-90. Thus, we will review the proposed legislation and give our opinion on its constitutionality. It is this Office's understanding from reading the version of the proposed legislation provided to us, it seeks to "[a]mend Act 84 of 2011... to extend the terms of the members of the board of trustees of Florence County School District Number Three [from three years] to four years, to stagger the terms of the members, to require that the members be elected at a general election held in an even-numbered year, and to provide the process by which a vacancy is filled."¹ The draft specifically changes the terms of some members to expire on December 31, 2018. As you are aware, the South Carolina General Assembly's authority is plenary. *Op. S.C. Att'y Gen.*, 2011 WL 1444714 (S.C.A.G. Mar. 1, 2011) (citing *City of Rock Hill v. Harris*, 391 S.C. 149, 705 S.E.2d 53, 2011 WL 204799 (January 24, 2011) (quoting *Moseley v. Welch*, 209 S.C. 19, 39 S.E.2d 133 (1946))). Therefore, let us begin and end with the conclusion that this Office, like a court, presumes the constitutionality of a statute and any doubt will be resolved in the favor of the constitutionality of a statute. See, e.g., *Ops. S.C. Att'y Gen.*, 1995 WL 803564 (S.C.A.G. May 11, 1995) (citing *Thomas v. Macklen*, 186 S.C. 290, 195 S.E. 539 (1937); *Townsend v. Richland County*, 190 S.C. 270, 2 S.E.2d 777 (1939)).

¹ Please note the proposed legislation had this language in all capital letters.

Regarding the proposed changes, the South Carolina Constitution requires the General Assembly to “provide for the maintenance and support of a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning, as may be desirable.” S.C. Const. Art. XI § 7. Our State Supreme Court has stated regarding laws concerning public schools that:

In the public education realm, we view local laws in light of the General Assembly's duties under Article XI of the South Carolina Constitution. *Id.* at 290–91, 718 S.E.2d at 217. In *McElveen v. Stokes*, we recognized that the scope of legislative power is much broader in dealing with school matters than is the scope in dealing with various other subjects. 240 S.C. 1, 10, 124 S.E.2d 592, 596 (1962). Thus, we have repeatedly sustained local laws pertaining to the state's public education system.

Abbeville Cty. Sch. Dist. v. State, 410 S.C. 619, 648, 767 S.E.2d 157, 172 (2014), amended, 414 S.C. 166, 777 S.E.2d 547 (2015), order superseded, 415 S.C. 19, 780 S.E.2d 609 (2015), and amended, 415 S.C. 19, 780 S.E.2d 609 (2015). The South Carolina General Assembly controls public education in this State, thus legislation for a particular district does not violate the Home Rule Act. Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975); Ops. S.C. Att’y Gen., 2009 WL 2844867 (August 4, 2009); 2015 WL 8773706 (November 24, 2015); see also S.C. Code § 59-19-40 (“The provisions of Section 59-19-30 shall neither repeal, supersede nor annul any special act providing for the appointment or election of school trustees in any school district or in any of the several counties of the State.”).² Quoting from a 2010 opinion by this Office regarding Moye and the election of school district trustees, we stated that:

“In Moye, the Court upheld a statute which changed the method of electing the boards of trustees of school boards for Lexington County against a challenge based upon Art. VIII, § 7's prohibition against laws for a specific county. The Court concluded as follows:

[t]he contrast between Article XI and Article VIII should be obvious. In Article XI the General Assembly is charged with the duty to provide for a system of public education, whereas in Article VIII the General Assembly is required to confer powers upon the counties so that they may carry out local functions. Moreover a reading of Article XI, which deals specifically with public education as a whole, . . . in light of the historical background of public education in this State, and attempting to harmonize the entire Article and extract the impact of each section, it is clear that the provisions of Article VIII, which deal with local government, have no application to the matter currently before us. 265 S.C. at 143-144, 217 S.E.2d 36, 38.

And, in Bradley v. Cherokee School District No. One of Cherokee County, 322 S.C. 181, 470 S.E.2d 570 (1996) the Supreme Court reaffirmed this reasoning in the context of a challenge made pursuant to Article III, § 34's prohibition against the enactment of special legislation.” Op. S.C. Atty. Gen., October 19, 2007.

² This is an overview of the sources. There are numerous other relevant sources not cited within this opinion.

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The South Carolina Supreme Court held in Walpole v. Wall that “[s]chool trustees are legislative, not constitutional, officers whose terms may be ended or extended at the will of the Legislature.” Walpole, 153 S.C.106, 149 S.E. 760, 764 (1929). South Carolina Jurisprudence explains that the “General Assembly may modify the term of an office if no constitutional provision is contravened.” 8 S.C. Jur. Public Officers and Public Employees § 31 (citing Ward v. Waters, 184 S.C. 353, 192 S.E. 410 (1937); Ops. S.C. Atty. Gen., No. 137 (1937); No. 138 (1927).)

...
The right to vote is a fundamental right, but the right to have an election is not. It is axiomatic that the General Assembly may consolidate school districts, Miller v. Farr, *supra* and neither Article III, § 34 (special laws prohibited where general law may be made applicable) or Article VIII (Home Rule) impedes such action because Article XI provides the Legislature with broad power to regulate public education.

Op. S.C. Att’y Gen., 2010 WL 2320810 (S.C.A.G. May 25, 2010) (footnotes omitted). We will include a copy of the May 25, 2010 opinion for you to read.

Conclusion:

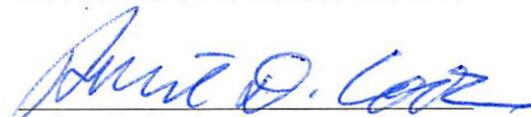
It is for all of the above reasons we presume the constitutionality of the proposed legislation and believe a court will find the proposed legislation constitutional, though we do not opine on the policy issues regarding proposed legislation.³ However, this Office is only issuing a legal opinion based on the current draft and law at this time as provided to us.⁴ Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

³ Nevertheless, we must caution that while we believe a court will determine the General Assembly may require the shortening and staggering of the terms of the board members, such changes may not be used to violate the federal Constitution. Moreover, this Office does not make factual determinations in an opinion.

⁴ Also due to the time constraints because this is pending legislation, we were not able to research the issues to the extent of a more comprehensive legal analysis, but we will gladly do so at your request in the future.