

1975 WL 28983 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 3, 1975

\*1 Mr. Henry S. Laffitte  
Chairman  
Allendale County Board of Directors  
Allendale, South Carolina 29810

Dear Henry:

Hopefully, my responses will be helpful to you on your queries in your letter of June 30, as to the following (I have divided your first question into two questions):

1a. Legally the towns within county borders are separate entities although the counties encompass the towns. The towns maintain the separate power to tax and for this reason the towns operate police systems, certain utilities such as water and maintain streets and sidewalks (except where same have been constructed by the State Highway Department, and in this instance, the Highway Department contends that it is the town's duty to maintain them thereafter.)

1b. The county is responsible for operating public schools but by state laws, the responsibilities of operating the schools have been delegated to the County Board of Education. Under Act No. 112 passed in 1965, later codified and somewhat amended in 1974, it is the responsibility of the Board of Education of Allendale County to file with the legislative delegation and auditor on or before April 1, an itemized amount of money needed for the maintenance and operation of the schools for the ensuing scholastic year, reporting all anticipated revenues for maintenance and operating expenses and the amount of levy or property tax necessary to raise such amount.

This Act also provides that upon consideration of the report filed by the Board of Education, the legislative delegation shall authorize the necessary ad valorem tax and it is thereafter the duty of the County Auditor to levy and the County Treasurer to collect the tax on all property within the district sufficient to meet the needs of the school.

The Act has a further provision giving the Board power to expend surplus funds of the district in the ordinary operating account not necessary for the support of the schools during any school session, for purchasing buses, school grounds or buildings, repairing and maintaining school buildings or for any ordinary school purposes, providing the majority of the Board shall approve the expenditure of such funds.

It should be further noted that the school board has constitutional authority to issue bonds separate and apart from the County Board of Directors, and the issuance of such does not fall within the constitutional county bond debt limit.

2. The obligation of the county to furnish garbage service for towns within the county is not clearly defined by state law. Section 32-1275 through 32-1280 provides that any county in the state may regulate the collection and disposal of garbage and this article provides that the article shall not apply to any incorporated city or town that regulates the disposal of its garbage or to individuals who dispose of it in a manner satisfactory to the Health Department, provided that the individual first obtains a license from the county governing body.

\*2 When this article was amended in 1974 which Amendment 32-1280.1 it provided that collection and disposal of the garbage may be accomplished by county employees and equipment or by contract or agreement of the county and

it further provided that service charges may be levied against whom services are provided, whether such services are furnished by the county, a municipality or a private agency.

There are certain other regulations under this Article which apparently are not pertinent but it would appear that the county has no duty to collect and dispose of garbage for municipalities.

3. Liability of County for Legal Fees for Indigents The Defense of Indigents Act is contained in Section 17-281 of the Supplement to the 1962 Code. It affirms that if a person entitled to counsel under the Constitution of the United States is determined to be financially unable to retain counsel, then the indigent may be provided counsel. The appointment of such counsel creates a claim against the assets and estate of the person who is provided counsel and the Attorney General is responsible for administering this section and all moneys collected hereunder shall be paid to the State Treasurer.

When private counsel is appointed, a reasonable fee is required—Ten Dollars per hour for time spent out of court and Fifteen Dollars per hour for time spent in court. Such fee shall not exceed the sum of Five Hundred Dollars in a noncapital case and Seven Hundred and Fifty Dollars in a capital case through final judgment on trial.

The General Assembly provided a formula based on every one Thousand persons residing in the county according to the most recent Census and the account is maintained by the State Treasurer. As you know, the funds under this formula have generally been inadequate to provide for compensation for the defense of indigents and in a number of counties, the County Supply Bills have taken care of this deficit.

It is my opinion that when the amount allocated to Allendale County has been expended, the county would be liable for payment of legal fees for defense of indigents. As a matter of precaution, it would be well to have a statement from the State Treasurer advising that the funds allocated for the county had already been expended for that fiscal year before such payment is made.

I would prefer that the Attorney General's office consider my replies to your questions and you should promptly forward to General McLeod a copy of this letter for his further enlightenment.

Very truly yours,

Thomas O. Lawton, Jr.  
Allendale County Attorney

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