ALAN WILSON
ATTORNEY GENERAL

October 12, 2023

Alice F. Paylor, Esq.
Saxton & Stump
151 Meeting Street, Suite 400
Charleston, SC 29401

Dear Ms. Paylor:

As attorney for the Charleston County School District, you have asked our opinion regarding whether the Charleston County House delegation has authority to respond to or receive testimony on actions taken by the District. It is our opinion that the House Delegation possesses such authority.

Art. I, § 3 of the South Carolina Constitution confers the entire legislative power upon the General Assembly. Moreover, in this regard, it is well recognized that:

> [t]he power of the General Assembly to obtain information on any subject upon which it has the power to legislate, with a view to its enlightenment and guidance, is so obviously essential to the performance of legislative functions that it has always been exercised without question.

Ex Parte Parker, 74 S.C. 466, 55 S.E. 122, 124 (1906). In accordance with the Parker decision, we have recognized that, while compulsory process would have to be specifically granted to the Committee by the Senate, "the Senate Agriculture and Natural Resource Committee could perform a "voluntary investigation of facts and evidence involved in any appropriate topic they choose to examine." Op. S.C. Att'y Gen., 1975 WL 22456 (Op. No. 4161) (October 22, 1975).

Art. XI, § 3 of the South Carolina Constitution makes public schools uniquely the province of the General Assembly. Such provision of the Constitution states:

> [t]he General Assembly shall 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.

Based upon this Constitutional provision, our Supreme Court has consistently ruled that the General Assembly may enact legislation concerning a particular school district without violating

the "special legislation" provision of the Constitution (Art. III, § 34) or the requirements of "Home Rule." (Art. VIII, § 7).

In this regard, the Court has explained its reconciliation of Art. XI, § 3 with Art. III, § 34 and Home Rule (Art. VIII, § 7) so as to sustain as constitutional local legislation involving a school district. In Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975), the Court upheld a statute which changed the method of elections of boards of trustees of school boards for Lexington County against a challenge based upon Article VIII, § 7's prohibition against laws for a specific county. The Moye Court concluded that Art. XI, § 3 prevailed as to public school matters:

> [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 solely with local government, have no application to the matter currently before us.

265 S.C. at 143-144, 217 S.E.2d at 38.

And in Bradley v. Cherokee School Dist. 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 Article III, § 34's prohibition against the enactment of special legislation. The Bradley Court distinguished Horry County v. Horry County Higher Ed. Comm., 306 S.C. 416, 412 S.E.2d 421 (1991) as follows:

> . . . Appellant contends Horry County v. Horry County Higher Ed. Comm. . . . has implicitly overruled this court's holding that the legislature may pass separate legislation regarding public education without violating constitutional limitations. . . . We disagree. . . . Horry County did not overrule Moye and the line of cases upholding legislation relating to school districts. In Horry County, the County was authorized to levy a tax sufficient to pay the interest and principal on bonds issued to finance the activities of the Horry County Higher Education Commission. The Horry act was found to be special legislation because while the tax imposed on all taxable property within Horry County, the funds were not used for the benefit of all persons residing within the area. Additionally, the funds in Horry were used solely for the benefit of one institution of higher learning. Although the court in Horry concluded that legislation regarding education is not exempt from the requirements of Article III, § 34 (IX), it also found that it does not prohibit all special legislation.
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> *3 A law that is special only in the sense that it imposes a lawful tax limited in application or incidence to persons or property within a certain school district does

> not contravene the provisions of Article Ill, § 34 (IX). Hay v. Leonard, 212 S.C. 81, 46 S.E.2d 653 (1948). Individual districts may impose a legal tax limited in application and incidence to persons or property, within the prescribed area. Shillito v. Spartanburg, 214 S.C. 11, 51 S.E.2d 95 (1948). Statutes upheld as constitutional were not only applied uniformly to all persons and property within the area affected, but the specific taxes were used for the benefit of all persons residing in the area. Id. The funds in this case are not confined to the sole use and benefit of any particular class but would benefit the entire county of Cherokee. . . . Accordingly, the trial court did not err in concluding that Act 588 imposes a lawful tax limited in application and incidence to persons or property in Cherokee County and as such is not a special law in violation of Article III, § 34 (IX). Hay v. Leonard, supra.

322 S.C. at 185-86, 470 S.E.d2d at 572-3. See also Wilson v. City of Cola., 434 S.C. 206, 218, 863 S.E.2d 456, 462 (2021) [referencing Moye v. Caughman, and noting that in Moye, the Supreme Court found "in the context of public education that Home Rule does not apply to local governments "because public education is not the duty of [local governments], but of the General Assembly. . . ."]. Thus, our Supreme Court has concluded that the General Assembly may legislate with regard to an individual school district, such as the Charleston County School District, without violating either the provision of the Constitution relating to "special legislation" or that concerning "Home Rule." We presume this was the purpose of the House members of the Charleston County Delegation's response here.

The issue here, of course, is not the full General Assembly, but the powers of the legislative delegation – in this instance, the House portion of the Delegation. As the Fourth Circuit has noted in Vander Linden v. Hodges, 193 F.3d 268 (4th Cir. 1999), legislative delegations in South Carolina" are elected bodies that exercise governmental functions." Likewise, House members not only form a powerful voting bloc in the Legislative Delegation, but also possess governmental functions and often act as a group. See e.g. Weeks v. Ruff, 164 S.C. 398, 162 S.E. 450, 451 (1932) [in order to address the county's debt limit, ". . . the Newberry House Delegation, at the 1930 session of the General Assembly, introduced in the House a Joint Resolution" proposing a constitutional amendment]. As we understand it, the House membership is acting in a bipartisan manner regarding the CCSD.

Inasmuch as the General Assembly plays a unique role with regard to oversight over the State's public schools, the local legislative delegation almost always serves as the focal point for passage of local legislation regarding a particular school district. The House portion of the Delegation certainly plays a pivotal role in that process. Thus, as the Supreme Court has recognized – a recognition which remains applicable even after the adoption of Home Rule – "[i]t is clear that under our Constitution school districts have no permanent existence in as much as the General Assembly has plenary power to create new school districts or to consolidate existing school districts with other school districts." Miller v. Farr, 243 S.C. 342, 349, 133 S.E.2d 838, 842 (1963). See also Walpole v. Wall, 153 S.C. 106, 149 S.E.760, 764 (1929) ["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. School trustees are legislative, not constitutional, officers whose

terms may be ended or extended at the will of the Legislature."]. Accordingly, the regulation of school districts is uniquely the province of the General Assembly and in the regulation of an individual school district, the members of local delegation play a fundamental role. .

As we emphasized in Op. S.C. Att'y Gen., 1986 WL 191969 (Op. No. 86-7) (January 14, 1986), "it is a general principle of law that 'the power to investigate is an essential corollary to the power to legislate.'" (quoting 81A C.J.S, States § 56). As the Court stated in Dubois v. Gibbons, 118 N.E.2d 295, 306 (Ill. 1954),

> . . . [t]he power and authority of legislative bodies to conduct investigations through committees has been recognized by the courts and is now well established (citations omitted). The power of a legislative body to make proper investigations is founded upon necessity. The very existence of a legislative body implies the power to investigate via committees of its members into those affairs with respect to which it may legislate or appropriate funds.

Moreover, in Op. S.C. Att'y Gen., 2013 QL 3362070 (June 19, 2013), we recognized that individual legislators who sought information so that he or she could perform their legislative duties were acting in their legislative capacity and thus protected by legislative immunity:

> Courts have recognized that the scope of performance of a legislator's duties is not limited to those acts in a legislative assembly meeting. Indeed, our own Supreme Court in Richardson v. McGill, 273 S.C. 142, 255 S.E.2d 341 (1979), has found that statements made by a member of the General Assembly attending as part of the county legislative delegation and a meeting with members of a county recreation commission were absolutely privileged. There, the Supreme Court stated that "[i]t is ... clear that unqualified privilege [for legislative acts] does not depend on the rigid requirement of a strictly legislative or judicial proceedings; its limits are fixed rather by considerations of public policy." 273 S.C., id. at 146, 255 S.E.2d, id. at 343. According to the Court, the absolute immunity of statements made by a legislator depended instead upon whether he or she "was engaged in a legislative duty or function at the time the defamatory statements were made." Id. Members of the legislative delegation from Williamsburg County "had an official interest in the proper operation of the county government and its agencies, including that of the Williamsburg County Recreation Commission." Id. Thus, the legislator in attending the meeting, was performing a legislative function, and such statements made by him in the course of that meeting, were deemed to be absolutely privileged.
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> In addition, courts have concluded that other acts of a legislator, including informal as well as formal information gathering, are part of his or her legislative duties. In Williams v. Johnson, 597 F.Supp.2d 107, 114 (D.D.C. 2009), the Court, per Kollar-Kotelly, J. stated as follows:
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> > ... the Supreme Court has never addressed whether the [Speech or Debate] Clause covers informal, as well as formal, information gathering by a legislator, and lower courts are divided on the question. See Jewish War Veterans [v. Gates], 506 F.Supp. 30, 54 (D.D.C. 2007). The Court, however,

> agrees with the well-reasoned decision by Judge John D. Bates in Jewish War Veterans in which Judge Bates concluded that investigation and information gathering by a legislator – whether formally or informally conducted – is protected by the Speech or Debate Clause "so long as the information is acquired in connection with or in aid of an activity that qualified as 'legislative' in nature." 506 F.Supp.2d at 57. That is, the Court is persuaded that, regardless of whether conducted formally or informally, "the acquiring of information [is] an activity that is a 'necessary concomitant of legislative conduct and thus should be within the ambit of the privilege so that [legislators] are able to discharge their duties properly.'" Dominion Cogen [D.C. Inc. v. District of Columbia], 878 F.Supp. 258 (D.D.C. 1995) at 263; see also Alliance for Global Justice [v. District of Columbia], 437 F.Supp.2d 32 (D.D.C. 2006) at 36.

**Conclusion**

In our opinion, the House Legislative Delegation is well within its authority to look into the performance of the Charleston County School District. The power to legislate includes the power to investigate or to gather information in order to determine what legislation may be needed or warranted. Even individual legislators representing Charleston County may ask questions and seek information regarding potential legislation. Moreover, legislation regarding individual school districts, such as CCSD, is uniquely within the province of the Charleston Legislative Delegation. Our Supreme Court has ruled that local legislation concerning individual school districts does not contravene the constitutional prohibition of "special legislation" or violate Home Rule. While the entire General Assembly must enact even local laws, see Bd. of Trustees of the School Dist. of Fairfield Co. v. State, 395 S.C. 276, 718 S.E.2d 210 (2011), the longstanding legislative practice has been to defer to the local Legislative Delegation regarding passage of these local laws. Of course, the House membership in that Delegation must play a pivotal role in enactment of any statute relating to an individual school district. In addition, our Supreme Court has emphasized that the General Assembly has plenary power to restructure a local school district and to end or extend terms of school board members as it sees fit.

Accordingly, we believe the Charleston County House membership certainly possesses the authority to examine the performance of the CCSD.

Sincerely,

Robert D. Cook
Solicitor General