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Carpenter

## Constitutional watchdog warning

**G**radfly or not, it's refreshing to find a citizen who cares enough about the state constitution to try to hold government at all levels to its test. Now, Edward D. Sloan Jr., a retired Greenville businessman and Citadel graduate who has filed dozens of government-related lawsuits, mostly local, has the governor's attention. A previous Sloan suit that got to the S.C. Supreme Court should serve as a caution to Berkeley and Dorchester school officials.

Mr. Sloan's current suit prompted Gov. Mark Sanford to make a personal appearance before the high court last week during arguments on the challenge to his membership in the U.S. Air Force Reserve in which he is a lieutenant. It is Mr. Sloan's contention that the governor's service in the Reserve is in violation of this provision of the S.C. Constitution:

"No person while governor shall hold any office or other commission (except in the militia) under the authority of this state or any other power." Mr. Sloan argues that the language "prohibits a governor from holding the commission of a power other than the State of South Carolina."

While the governor clearly feels strongly about the value of his service in the Reserve, we have felt from the outset that it presents an inherent conflict because of his decision to join his unit if called to active duty. We contended when he made that decision last spring that his first responsibility was to the voters of South Carolina, who only a few months earlier had elected him as the state's chief executive. The fact that his dual positions have become an issue is reason enough for the constitutional clarification Mr. Sloan is asking the court to provide.

Unfortunately, an important constitutional question that now affects school construction in both Berkeley and Dorchester counties initiated by Mr. Sloan several years ago still needs a definitive answer from the high court. It was a

Sloan suit that challenged a huge bond issue in Greenville County that involved an alternate system of financing after a similar issue was defeated at the polls. Both the Berkeley and Dorchester school boards are using a version of the Greenville plan that calls for the creation of a nonprofit board that would issue the bonds and sell the schools to the districts in stages.

Mr. Sloan says he agreed to a negotiated consent order approved by the high court after winning two of his three points: a requirement that the nonprofit corporation be subject to the district's procurement code and a directive that the state's Freedom of Information Act apply to the Greenville corporation. Also clearly not inconsequential was an agreement to pay his attorney's fees of some \$250,000. But left hanging was the more difficult and substantial issue of whether the not-for-profit corporation is, in effect, the "alter ego" of the school district and thus subject to the constitutional debt limit that can only be overridden by voter referendum.

We don't question the need in both Berkeley and Dorchester counties that has prompted the school boards' decisions. In fact, we were strong supporters of the Dorchester referendum recently rejected by the voters. On our Commentary page today, Berkeley officials make their case for opting for this new form of financing. But are the boards doing indirectly what they can't do directly? We have urged school officials to get a definitive answer to that question from the high court.

The boards' legal experts insist they are on sound constitutional ground. Maybe so. But the school boards are on notice that there are those who strongly disagree. And obviously Mr. Sloan isn't the only citizen who can file a lawsuit. This is not an issue government officials can assume will go unchallenged. This is an instance where government officials should take the initiative and ask the high court for the needed assurance before launching such major undertakings.