November 9, 2007

The Honorable Mike Fair
Member, South Carolina Senate
Post Office Box 14632
Greenville, South Carolina 29610

Dear Senator Fair:

We received your letter requesting an opinion of this Office as to the interpretation of Act 602 of 1992 concerning the determination of the annual budget and tax millage for the School District of Greenville County (the "District"). In your letter, you state:

> The final sentence of subsection (C) of Act 602 reads "This subsection does not restrict the total budget of the district." It has been proposed that this last sentence means that the funding formula under subsection (C) of Act 602 is independent of the four mill limit of subsection (D) of Act 602 with the result that an auditor's responsibility to set millage under the provisions of Section 59-21-1030 (EIA Local Maintenance) qualifies as a new unfunded state mandate under the subsection (C) formula and is not restricted by the four mill limitation of subsection (D).
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> This aforementioned interpretation appears to ignore the "plain" and "straightforward" reading of Act 602 and would, by logical extension, result in the illogical conclusion that Act 602 through independent subsections (C) and (D) allows a double tax increase for the same item (i.e. a tax increase could be enacted contemporaneously for the same inflation amount under both subsection (C) and (D); likewise with regard to unfunded mandates and reductions in federal or state funding). The correct reading of Subsections (C) and (D) of Act 602 appears to be that the combined increase for all items enumerated in subsection (C) cannot exceed the four mill limit set forth in subsection (D). This is further evidenced by the parallel description afforded the category of items for which an increase can be enacted in each of the two subsections (i.e. inflation, unfunded mandates, reductions).
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> It seems more logical that the last sentence of subsection (C) simply notes that there is no restriction on the total budget in "subsection (C)"

> because the overall limit is provided in the following "subsection (D)." Additionally, subsection (C)'s last sentence can be read to harmonize with the last sentence of subsection (D) (i.e. the "total budget" is not being limited because a referendum option exists if the board desires to increase their budget in excess of the four mill limitation).

Based on this information, you ask:

> What is the annual limitation imposed on the increase in operating millage of the Greenville County School District under S.C. Act No. 602 of 1992. Is the millage increase formula set forth in subsection (C) of Act 602 limited by the annual four mill limitation set forth in subsection (D) of Act 602. Specifically, do the provisions of S.C. Act No. 602 of 1992 provide for greater than a four mill increase in the annual operating tax millage of the Greenville County School District?

Law/Analysis

Act 602 of 1992 provides in pertinent part as follows:

> SECTION 1. (A) Notwithstanding other provisions of law, the annual budget for the School District of Greenville County must be determined in accordance with this act.
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> (B) The board of trustees of the district annually shall prepare a budget and recommend to the county auditor the amount of tax millage, computed to the nearest whole mill, necessary to defray the cost of the budget. As used in this act, "budget" means that amount of the total cost of operating the schools of the district and does not include bonded indebtedness.
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> (C) For a given fiscal year the board may increase millage to raise funds based on the prior year's consumer price index for the southeast published by the United States Department of Labor as reported by the State Budget and Control Board as it applies to the amount of the budget in the prior fiscal year, plus the amount required to fund new unfunded federal and state mandates, plus the amount of reductions in federal and state monies not accompanied by corresponding program cuts, and minus new total anticipated income from all sources available to the district. Errors in projected income must be taken into consideration in the next year's funding calculations. For purposes of this subsection, reductions in federal and state monies means actual reductions in total federal and state funds to be received by the district

> in the prior fiscal year. This subsection does not restrict the total budget of the district.
>
> (D) The board may increase the budget to the amount necessary to raise revenue to the level of combined mandates, reductions, and inflation, not to exceed four mills in any one year. If the board finds it necessary to increase the budget beyond the limits prescribed in this subsection, it shall submit the question to the qualified electors of the district by referendum.
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> . . . .

1992 S.C. Acts 3634.

The courts, as well as this Office, recognized the primary purpose in interpreting a statute "is to ascertain the intent of the legislature." New York Times Co. v. Spartanburg County School Dist. No. 7, 374 S.C. 307, 310, 649 S.E.2d 28, 30 (2007). Furthermore, "'[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers.'" Id. (quoting Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992)). "The words used in the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation." Wortman v. Spartanburg, 310 S.C. 1, 3, 425 S.E.2d 18, 19 (1992). Moreover, "statutes must be read as a whole, and sections which are part of the same general statutory scheme must be construed together and each one given effect, if reasonable." State v. Thomas, 372 S.C. 466, 468, 642 S.E.2d 724, 725 (2007).

We believe the Legislature, by enacting Act 602, intended to provide the District with guidance and limitations in setting its annual budget and levying the tax millage used to fund that budget. Subsection (B) affords authority to the District's board of directors to prepare the annual budget and recommend an appropriate millage rate increase based on that budget to the county auditor. In reading subsection (C), we conclude that this provision provides a list of factors the District may consider in setting its budget and ultimately its millage rate, specifying four particular factors for which millage rates may be increased. Subsection (D) on the other hand appears to place a limitation on the millage rate that may be imposed to fund the District's budget.

From your letter, we understand that an argument has been proposed that the millage rate limitation found in subsection (D) is not applicable when the increase is due to one of the four factors listed in subsection (C). As you indicate, the proponents of this position cite to the last sentence of subsection (C) for support of their contention that these two subsections operate independent of one another. The last sentence of subsection (C) reads: "This subsection does not restrict the total budget of the district." The argument, as we understand it, is that this sentence should be interpreted to mean that so long as the budget is increased due to the four factors mentioned in subsection (C), these increases are not restricted in any way, including by the four mill limitation found in subsection (D). While we appreciate this interpretation, we believe that subsection (C) connotes a different meaning and does not necessarily give the District unbridled authority to increase its millage rate based on the four

factors listed in subsection (C) despite restrictions found elsewhere in the Act. Furthermore, we believe the better reading is that the Legislature intended for subsections (C) and (D) to be read together and as a result, the four mill limitation applies to all millage rate increases for the District including those based upon the factors listed in subsection (C).

Based on our reading of subsection (C), although somewhat unclear, we find it permissive, in that it gives the District authority to increase its millage based on certain factors. By including the last sentence of subsection (C), we believe the Legislature intended to clarify that while the District may adjust its budget to account for inflation, new unfunded federal and state mandates, reductions in state and federal funding, and new sources of income, these factors do not restrict the District's budget. Accordingly, we believe this sentence contemplates other factors that may influence the District's budget. However, we do not read this sentence to exempt increases under this subsection from any limitations that may be imposed in other provisions under the Act. Therefore, we do not find this or any other portion of Act 602 expressly exempts those items mentioned in (C) from the application of the four mill limitation found in subsection (D).

Subsection (D) states the District's board may increase the budget to compensate for "combined mandates, reduction, and inflation" in the specific context of the four mill limitation. These three items for which the District may increase its budget correspond to three of the four items enumerated in subsection (C) for which the District may increase its millage. This express recognition clarifies, in our minds, that the Legislature intended for these two provisions to be read together and for the four mill limitation to apply to those items listed in subsection (C). Therefore, while subsection (C) allows for millage rate increases based on certain factors, subsection (D) places an overall limitation on how much the District may increase its millage rate in a given year despite the factors the Legislature suggests the District take into account that justify millage rate increases generally.

In your letter, you indicated the presumption that the local minimum effort requirement established under 59-21-1031 constitutes an unfunded state mandate under subsection (C) of Act 602. If this presumption is correct, the millage rate increase for this mandate, along with the other mandates and other factors listed, is limited to four mills under subsection (D). However, we do not opine as to the correctness of this presumption as we have not been asked whether the local minimum effort required under section 59-21-1031 of the South Carolina Code constitutes an unfunded mandate within the meaning of subsection (C) of Act 602 of 1992. Furthermore, we surmise that a court would have to read the minimum local effort requirement imposed by section 59-21-1031 of the South Carolina Code together with the provisions of Act 602 to determine the impact of Act 602 on this statutory provision. See Richland County School Dist. One v. Richland County Council, 310 S.C. 106, 425 S.E.2d 747 (1992). However, we believe only a court can make this determination.

Conclusion

Act 602 of 1992 provides specific guidance to the District as to what factors may be considered in increasing its budget from the prior year and as a result, increasing its operating millage. Even though Act 602 may be subject to alternative readings, employing the rules of statutory construction, we are of the opinion that the better interpretation of this legislation is that subsection (D) of Act 602

limits the overall increase in the District's annual operating millage to four mills. We note that the Legislature may, if it so desires, amend Act 602 to clarify the effect of the four mill limitation set forth in subsection (D) on the factors enumerated in subsection (C).[1]

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Assistant Deputy Attorney General

[1]This is based on the assumption that such an amendment would not be viewed as special legislation by courts in light of the Supreme Courts' decision in Bradley v. Cherokee School Dist. No. One of Cherokee County, 322 S.C. 181, 470 S.E.2d 570 (1996).