HENRY MCMASTER
ATTORNEY GENERAL

October 14, 2009

Marshall N. Katz, Chairman
Broad Creek Public Service District
Post Office Box 5878
Hilton Head Island, South Carolina 29938

Dear Mr. Katz:

We received your letter requesting an opinion of this Office on behalf of the Broad Creek Public Service District Commission (the "Commission") concerning "the apparent conflicting statutory provisions applicable to the [the Broad Creek Public Service District (the "District")] set forth in Sections 6-1-320 and 6-11-271 of the South Carolina Code of Laws, as amended." Specifically, you ask the following three questions:

> a. For purposes of this District, does Section 6-11-271 override Section 6-1-320 as it applies to subparagraph A of Section 6-1-320 in the rollback millage calculation during a reassessment of the County?
>
> b. In the event that your opinion is that Section 6-1-320 does apply and the County rollback is appropriate, would the District be authorized, pursuant to Section 6-1-320(C), to conduct an override meeting.
>
> c. The County's reassessment program is just now in process. It will run for the normal time frame. There will likely be appeals by individual taxpayers as to their assessments. If, in fact, your office opines that the rollback is indeed required pursuant to Section 6-1-320 from 10 mills to 9 mills as per the County estimates, what would happen if the County estimate of the required rollback turns out to be higher than the actual results of reassessment? For example, this rollback should not have been from 10 to 9 mills, rather from 10 to 9.5? How is that to be addressed, particularly in light of the fact that the final results of the reassessment will likely not be known until sometime in calendar year 2010, well after the 2009 tax billings?

**Law/Analysis**

Section 6-1-320 of the South Carolina Code (Supp. 2008) generally places a limitation on how much a local governing body may increase its millage rate in a given year to that amount necessary to account for inflation and changes in population. Section 6-1-320(A) also provides that "in a year in which a reassessment program is implemented, the rollback millage, as calculated pursuant to Section 12-37-251(E), must be used in lieu of the previous year's millage rate." Section 12-37-251(E) of the South Carolina Code (Supp. 2008) provides the formula by which rollback millage is to be determined and states:

> Rollback millage is calculated by dividing the prior year property tax revenues by the adjusted total assessed value applicable in the year the values derived from a countywide equalization and reassessment program are implemented. This amount of assessed value must be adjusted by deducting assessments added for property or improvements not previously taxed, for new construction, and for renovation of existing structures.

Section 6-1-300 provides a definition for the term "local governing body" as used in section 6-1-320 and other provisions contained in article 3 of chapter 1 of title 6. This definition states: "'Local governing body' means the governing body of a county, municipality, or special purpose district. As used in Section 6-1-320 only, local governing body also refers to the body authorized by law to levy school taxes." Therefore, the provisions in section 6-1-320 are applicable to special purpose districts and presumably, applicable to the District.

However, as you mentioned in your letter, section 6-11-271 explains how millage should be levied for special purpose districts created prior to March 7, 1973. This provision provides:

> (A) For purposes of this section, "special purpose district" means any special purpose district or public service authority, however named, created prior to March 7, 1973, by or pursuant to an act of the General Assembly of this State.
>
> (B)(1) This subsection applies only to those special purpose districts the governing bodies of which are not elected but are presently authorized by law to levy for operations and maintenance in each year millage up to or not exceeding a given amount and did impose this levy in fiscal year 1997-98.
>
> (2) There must be levied annually in each special purpose district described in item (1) of this subsection, beginning

with the levy for fiscal year 1999, ad valorem property tax millage in the amount equal to the millage levy imposed in fiscal year 1998.

(C)(1) This subsection applies only to those special purpose districts, the governing bodies of which are not elected but are presently authorized by law to levy for operations and maintenance in each year millage without limit as to amount.

(2) There must be levied annually in each special purpose district described in item (1) of this subsection, beginning with the levy for fiscal year 1999, ad valorem property tax millage in the amount equal to the millage levy imposed in that special purpose district for operations and maintenance for fiscal year 1998.

(D) Notwithstanding any other provision of law, any special purpose district within which taxes are authorized to be levied for maintenance and operation in accordance with the provisions of subsections (B) or (C) of this section, or otherwise, may request the commissioners of election of the county in which the special purpose district is located to conduct a referendum to propose a modification in the tax millage of the district. Upon receipt of such request, the commissioners of election shall schedule and conduct the requested referendum on a date specified by the governing body of the district. If approved by referendum, such modification in tax millage shall remain effective until changed in a manner provided by law.

(E)(1) All special purpose districts located wholly within a single county and within which taxes are authorized to be levied for maintenance and operation in accordance with the provisions of subsections (B) or (C) of this section, or otherwise, are authorized to modify their respective millage limitations, provided the same is first approved by the governing body of the district and by the governing body of the county in which the district is located by resolutions duly adopted. Any increase in millage effectuated pursuant to this subsection is effective for only one year.

(2) Any millage increase levied pursuant to the provisions of item (1) of this subsection must be levied and collected by the appropriate county auditor and county treasurer.

According to your letter, the Legislature established the District in 1972. In addition, you informed us that the Commission is appointed, rather than elected, and according to its enabling legislation, the Commission has the ability to levy a property tax of up to 5 mills per year. Thus, the District satisfies the definition of a special purpose district under section 6-11-271(A). Furthermore, in accordance with subsection (B), the District must levy the same property tax millage imposed for fiscal year 1998 every subsequent year unless subsection (D) or (E) apply.

You informed us that in 1998, by referendum, the millage rate for the District increased from 5 mills to 10 mills and has been fixed at 10 mills since 1998. Thus, you argue that pursuant to section 6-11-271(B), the District must impose a property tax of 10 mills. However, Beaufort County takes the position that the rollback provisions in section 6-1-320 are applicable and that under the rollback calculation, the District can only impose a levy of 9 mills.

To resolve the potential conflict between sections 6-1-320 and 6-11-271, we employ the rules of statutory construction. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Berkeley County School Dist. v. South Carolina Dept. of Revenue, 383 S.C. 334, 344, 679 S.E.2d 913, 919 (2009) (quotations omitted). "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." McClanahan v. Richland County Council, 350 S.C. 433, 438, 567 S.E.2d 240, 242 (2002). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 412, 526 S.E.2d 716, 719 (2000) (citation omitted).

We presume that by including a provision in section 6-1-320 requiring the use of rollback millage in reassessment year, the Legislature sought to place the tax revenues received in years of reassessment on par with tax revenues received in the year prior to the reassessment and thus, avoiding the potential of placing an enormous burden on taxpayers owning property that increased in value under the reassessment. Certainly, the Legislature would have this same concern regardless of the entity assessing the tax. Thus, we believe the Legislature intended for the rollback provisions to apply to special purpose districts. This conclusion is further supported by the fact that section 6-1-300 specifically makes section 6-1-320 applicable to special purpose districts. Furthermore, we do not believe the Legislature's reasoning would change with regard to a special purpose district created prior to March 7, 1973. If these special purpose districts were exempt from the rollback provisions, they would essentially receive a significant increase in tax revenue in years of reassessment. As such, taxpayers could see a considerable tax increase from the prior year. We do not believe this was the intention of the Legislature.

We find further support for our understanding of the Legislature's intent in the Legislative history of sections 6-1-320 and 6-11-271. Our courts have explained: "There is a presumption that the legislature has knowledge of previous legislation when later statutes are enacted concerning related subjects." City of Camden v. Fairfield Elec. Co-op., Inc., 372 S.C. 543, 548, 643 S.E.2d 687,

690 (2007). Thus, pursuant to the Last Legislative Expression Rule, "in instances where it is not possible to harmonize two sections of a statute, the later legislation supersedes the earlier enactment." Williams v. Town of Hilton Head Island, S.C., 311 S.C. 417, 421, 429 S.E.2d 802, 804 (1993). The Legislature originally enacted section 6-11-271 in 1998. 1998 S.C. Acts 2389. While the Legislature initially enacted section 6-1-320 in 1997, the Legislature amended and reenacted subsection (A) of this provision, containing the rollback provision, on numerous occasions, including as recently as 2007. 1997 S.C. Acts 704, 1999 S.C. Acts 1177, 2005 S.C. Acts 1634, 2006 S.C. Acts 3133, 2007 S.C. Acts 186, 2007 S.C. Acts 557, 2007 S.C. Acts 688. Following the Last Legislative Expression Rule, section 6-1-320 appears to control. Accordingly, we believe that the rollback provision in section 6-1-320(A) is applicable to special purpose districts to which section 6-11-271 applies and section 6-11-271 does not override section 6-1-320. Thus, it is our opinion that the rollback provision in section 6-1-320 applies to the District.

Finding the rollback provision in 6-1-320 applicable to the District, you ask whether the District is authorized under section 6-1-320(C) to conduct an override meeting. We believe the provision you are referring to is subsection (C) of the original version of section 6-1-320 passed in 1997. This provision allowed local governing bodies too override the millage rate limitation in subsection (A) by a positive majority vote. S.C. Code Ann. § 6-1-320(C) (2004). The Legislature eliminated this provision in its amendments to section 6-1-320 in the 2006 Property Tax Reform Act. 2006 S.C. Acts 3133. Thus, the option of an override the local governing body is no longer available.

You also ask what would happen if the County's estimate of the required rollback turns out to be higher than the actual results of the reassessment. Particularly, you are concerned with the fact that individual taxpayers will likely appeal their assessments causing the final results of the reassessment to not be known until 2010, after the 2009 tax billings. In Angus v. City of Myrtle Beach, 363 S.C. 1, 609 S.E.2d 808 (2005), our Supreme Court addressed whether or not a city could include an allowance for appeals to reduce the assessment when calculating rollback millage. The Court found as follows:

> The fixing of a tax rate is a legislative function that must be given the greatest respect by the courts unless that function is exercised in an illegal manner. Simkins v. City of Spartanburg, 269 S.C. 243, 237 S.E.2d 69 (1977). It is basic hornbook law that when a government entity levies a tax, "the method outlined in the applicable law must be followed, at least in substance and especially concerning all mandatory provisions." 16 McQuillin Mun. Corp. § 44.97 (3d ed. 1998). We conclude Myrtle Beach's use of non-statutory variables violates § 12-37-251(E).

Id. at 4-5, 609 S.E.2d at 809-10 (footnote omitted). Based on the Court's conclusions in Angus, we believe that the rollback calculation as stated in section 12-37-251(E) of the South Carolina Code

must be utilized given the best information available with regard to the assessed value of the property. Additionally, the potential impact appeals may have on the final assessed value of the property cannot be considered when calculating the rollback millage.

**Conclusion**

Given our understanding of the Legislature's intent with regard to section 6-1-320 and employing the rules of statutory interpretation, we do not believe section 6-11-271 overrides section 6-1-320. As such, we are of the opinion that the District must employ the rollback provision in section 6-1-320(A) in a reassessment year.

As to the District's ability to employ section 6-1-320(C) in order to override the millage rate cap established under section 6-1-320(A), this provision no longer exists under the current version of section 6-1-320.

Finally, based on our Supreme Court's ruling in Angus, section 12-37-251(E) must be followed when calculating rollback millage and the District or the County is without authority to make any adjustments to the rollback calculation not called for under this provision. More specifically, the Court makes clear that the rollback calculation cannot include an allowance for appeals.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General