ALAN WILSON
ATTORNEY GENERAL

March 30, 2012

Francenia B. Heizer, Esquire
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P. O. Box 11390
Columbia, SC 29211

Dear Ms. Heizer,

We received your letter requesting an opinion on behalf of your client, the Abbeville County School District ("School District"), as to whether the Board of Trustees of the School District ("the Board") is the "local governing body" for purposes of section 6-1-320(b) of the South Carolina Code of Laws. You provide us with the following information relevant to your question:

> Pursuant to Act No. 172 (1999 Acts), the Abbeville County Board of Education was abolished and the powers and duties of the Abbeville County Board of Education were devolved upon the Board of Trustees of Abbeville County School District 60. Also...the name of the School District was changed to the Abbeville County School District.
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> Pursuant to Act No. 755 (1988 Acts), "the board may levy annually upon all taxable property in the district a tax in order to meet the cost of operating and maintaining the district during each fiscal year. If the budget adopted by the board for a fiscal year requires the imposition of an operational millage in excess of that imposed for the preceding fiscal year, the millage must be approved by the county council for Abbeville County."
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> Act No. 755 has traditionally been interpreted to require the approval of the County Council for any millage increases for school operations and maintenance.
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> Pursuant to Section 6-1-300(3) of the Code, local governing body means "the body authorized by law to levy school taxes."

Copies of Acts 172 and 755 have been included for our review.

Law/Analysis

S.C. Code section 6-1-320(B) lists seven specific purposes for which a "local governing body" may increase a millage rate in spite of the limitation imposed on millage rate increases in subsection (A) of the same statutory section. Section 6-1-320 as a whole provides:

(A)(1) Notwithstanding Section 12-37-251(E), a local governing body may increase the millage rate imposed for general operating purposes above the rate imposed for such purposes for the preceding tax year only to the extent of the increase in the average of the twelve monthly consumer price indices for the most recent twelve-month period consisting of January through December of the preceding calendar year, plus, beginning in 2007, the percentage increase in the previous year in the population of the entity as determined by the Office of Research and Statistics of the State Budget and Control Board. If the average of the twelve monthly consumer price indices experiences a negative percentage, the average is deemed to be zero. If an entity experiences a reduction in population, the percentage change in population is deemed to be zero. However, in the 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.

(2) There may be added to the operating millage increase allowed pursuant to item (1) of this subsection any such increase, allowed but not previously imposed, for the three property tax years preceding the year to which the current limit applies.

(B) Notwithstanding the limitation upon millage rate increases contained in subsection (A), the millage rate limitation may be suspended and the millage rate may be increased upon a two-thirds vote of the membership of the local governing body for the following purposes:

(1) the deficiency of the preceding year;

(2) any catastrophic event outside the control of the governing body such as a natural disaster, severe weather event, act of God, or act of terrorism, fire, war, or riot;

(3) compliance with a court order or decree;

(4) taxpayer closure due to circumstances outside the control of the governing body that decreases by ten percent or more the amount of revenue payable to the taxing jurisdiction in the preceding year; or

(5) compliance with a regulation promulgated or statute enacted by the federal or state government after the ratification date of this section for which an appropriation or a method for obtaining an appropriation is not provided by the federal or state government.

(6) purchase by the local governing body of undeveloped real property or of the residential development rights in undeveloped real property near an operating United States military base which property has been identified as suitable for residential development but which residential development

> would constitute undesirable residential encroachment upon the United States military base as determined by the local governing body....; or
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> (7) to purchase capital equipment and make expenditures related to the installation, operation, and purchase of the capital equipment including, but not limited to, taxes, duty, transportation, delivery, and transit insurance, in a county having a population of less than one hundred thousand persons and having at least forty thousand acres of state forest land....
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> If a tax is levied to pay for items (1) through (5) above, then the amount of tax for each taxpayer must be listed on the tax statement as a separate surcharge, for each aforementioned applicable item, and not be included with a general millage increase. Each separate surcharge must have an explanation of the reason for the surcharge. The surcharge must be continued only for the years necessary to pay for the deficiency, for the catastrophic event, or for compliance with the court order or decree.
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> (C) The millage increase permitted by subsection (B) is in addition to the increases from the previous year permitted pursuant to subsection (A) and shall be an additional millage levy above that permitted by subsection (A). The millage limitation provisions of this section do not apply to revenues, fees, or grants not derived from ad valorem property tax millage or to the receipt or expenditures of state funds.
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> (D) The restriction contained in this section does not affect millage that is levied to pay bonded indebtedness or payments for real property purchased using a lease-purchase agreement or used to maintain a reserve account. Nothing in this section prohibits the use of energy-saving performance contracts as provided in Section 48-52-670.
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> (E) Notwithstanding any provision contained in this article, this article does not and may not be construed to amend or to repeal the rights of a legislative delegation to set or restrict school district millage, and this article does not and may not be construed to amend or to repeal any caps on school millage provided by current law or statute or limitation on the fiscal autonomy of a school district that are more restrictive than the limit provided pursuant to subsection (A) of this section.
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> (F) The restriction contained in this section does not affect millage imposed to pay bonded indebtedness or operating expenses of a special tax district established pursuant to Section 4-9-30(5), but the special tax district is subject to the millage rate limitations in Section 4-9-30(5).

For purposes of Article 3, Chapter 1 of Title 6, "local governing body" is defined as "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.*" § 6-1-300(3) (Supp. 1997) (emphasis added). Thus, to answer the question of whether the Board is the "local governing body" for

purposes of section 6-1-320, we need only determine if the Board is "the body authorized by law to levy school taxes" pursuant to section 6-1-300(3).

As you indicate, the General Assembly has enacted local legislation authorizing the Board to "levy annually upon all taxable property in the district a tax in order to meet the cost of operating and maintaining the district during each fiscal year." 1988 Act No. 755, §3. Based on this grant of authority, we have no difficulty concluding that the Board is "the body authorized by law to levy school taxes" pursuant to section 6-1-300(3). Thus, we conclude the Board constitutes the "local governing body" for purposes of section 6-1-320.

However, section 3 of Act No. 755 also prohibits the Board from imposing any increase in the operational millage rate without the approval of the County Council: "If the budget adopted by the board for a fiscal year requires the imposition of an operational millage in excess of that imposed for the preceding fiscal year, the millage must be approved by the county council for Abbeville County." In the absence of such approval, the millage rate the Board may impose in any fiscal year is capped at a level equal to that which was imposed the fiscal year before.

Although this millage cap appears to be in conflict with subsections (A) and (B) of 6-1-320, such an apparent conflict is specifically addressed in subsection (E) of 6-1-320:

> Notwithstanding any provision contained in this article, this article does not and may not be construed to amend or to repeal the rights of a legislative delegation to set or restrict school district millage, and this article does not and may not be construed to amend or to repeal any caps on school millage provided by current law or statute or limitation on the fiscal autonomy of a school district that are more restrictive than the limit provided pursuant to subsection (A) of this section.

§ 6-1-320(E) (emphasis added). Clearly, Act No. 755 limits the Board's fiscal autonomy and imposes a cap on school millage which is more restrictive than the limit provided in section 6-1-320(A). Therefore, pursuant to subsection (E) of 6-1-320 the Board may not increase the millage rate within the limits provided in subsection (A) without the approval of the County Council.

The issue thus becomes whether subsection (E) of 6-1-320 and the millage cap of Act No. 755 require the County Council's approval for a millage rate increase imposed for one of the specific purposes set forth in subsection (B) of 6-1-320. Stated differently, we must determine whether subsection (B) or subsection (E) of 6-1-320 is controlling in light of the millage cap imposed by Act No. 755. If subsection (B) controls, then the millage increase limitation of subsection (A) "may be suspended and the millage rate may be increased" by a two-thirds vote of the Board for one of the seven purposes set forth in subsection (B). If, on the other hand, subsection (E) controls, then the millage cap of Act No. 755 applies and a millage rate increase imposed for one of the purposes set forth in subsection (B) would still require the approval of the County Council.

A 2003 opinion issued by this Office is directly on point. See Op. S.C. Att'y Gen., 2003 WL 22172239 (September 17, 2003). That opinion involved local legislation prohibiting any millage increase in a York County school district above six mills "in any year over that levied the previous year without the approval of the qualified electors of the district in a referendum." Id. at *1. In determining whether subsection (B) or (E) of 6-1-320 controlled, we observed that these two provisions "seem in irreconcilable

conflict. Subsection (E) appears to govern because that paragraph is subsequent to Subsection (B) and uses the very exacting language '[n]otwithstanding any provision contained herein,'[1] which would appear to encompass Subsection (B) as well." Id. at *5. We believed, however, that "a court would likely read these two provisions in conjunction with and in harmony with each other in an effort to reconcile any apparent conflict" based on the following reasoning:

> Subsection (B) of § 6-1-320 establishes four specific exceptions[2] to the limitations of § 6-1-320. Thus, when Subsection (E) refers to "any provision contained herein" it is logical that the General Assembly was not referring to Subsection (B) which had already established certain exemptions. Moreover, to read Subsection (E)'s reiteration that all local tax caps remain in place as overriding the exceptions contained in Subsection (B), would render those exceptions nugatory. We do not believe the General Assembly intended this result, especially since the Subsection (B) exceptions are so specific. Where one provision deals with a matter in general terms (here, Subsection E) and another encompasses the same matter in more specific terms (Subsection B), the more specific provision will be considered an exception to, or qualifier of the general provision and given such effect. Whiteside v. Cherokee Co. Sch. Dist. No. 1, 311 S.C. 335, 428 S.E.2d 886 (1993).
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> It is important also to note that Subsection (B)(2) deals with the constitutional requirement of Article X, § 7 of the South Carolina Constitution. [3] If § 6-1-320(E) is deemed controlling as to the exception of Subsection (B), this would mean that a deficit could not be remedied where a local tax cap existed. In essence, the constitutional requirement could, because of the presence of local legislation, be ignored. Again, we do not believe the General Assembly intended this illogical and unconstitutional result.

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[1] Since this 2003 opinion was issued, section 6-1-320(E) was amended to read "notwithstanding any provision contained *in this article*" as opposed to "herein." See Act 57 of 2007 (emphasis added). The act also substituted "that are more restrictive than the limit provided pursuant to subsection (A) of this section" at the end of subsection (E) in place of "as currently in the existing law."

[2] As previously set forth in this opinion, subsection (B) now includes seven specific circumstances under which a local governing body may increase the millage rate. See Act 145 of 2005; Act 410 of 2008.

[3] Article X, § 7(b) provides:

> Each political subdivision of the State...and each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year. Whenever it shall happen that the ordinary expenses of a political subdivision for any year shall exceed the income of such political subdivision, the governing body of such political subdivision shall provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year. The General Assembly shall establish procedures to insure that the provisions of this section are enforced.

Id. at *5-6. Thus, we found a court would likely conclude that "a local governing body could not raise tax millage in excess of the tax cap established by local legislation, except in those specific, extraordinary circumstances enumerated in Subsection (B)." Id. at *6.

The reasoning and conclusions of our 2003 opinion are equally applicable here. Accordingly, we conclude the Board may not raise the millage rate without the approval of County Council unless the millage rate is increased for one of the specific, extraordinary purposes set forth in section 6-1-320(B).

Conclusion

It is our opinion that the Board is the "local governing body" as that term is used in section 6-1-320. Section 6-1-300(3)'s definition of "local governing body" for purposes of section 6-1-320 includes "the body authorized by law to levy school taxes." Local legislation enacted by the General Assembly grants the Board the authority to "levy annually upon all taxable property in the district a tax in order to meet the cost of operating and maintaining the district during each fiscal year." Thus, the Board clearly falls within the statutory definition of "local governing body."

However, the same local legislation mentioned above limits the fiscal autonomy of the Board in that the County Council must approve an increase in the millage rate. In the absence of such approval, the millage rate the Board is authorized to impose is capped at a level equal to that imposed the year before. Subsection (E) of 6-1-320 provides that "[n]otwithstanding any provision contained in this article....this article does not and may not be construed to amend or repeal any caps on school millage provided by current law or statute or limitation on the fiscal autonomy of a school district that are more restrictive than the limit provided pursuant to subsection (A) of this section." In a 2003 opinion, we concluded that subsections (B) and (E) of 6-1-320, when construed together, prohibit a local governing body from raising tax millage in excess of a tax cap established by local legislation "except in those specific, extraordinary circumstances enumerated in Subsection (B)." For the reasons stated in that opinion, we likewise conclude that the Board may not raise the millage rate without the approval of County Council unless the millage is increased for one of the seven extraordinary purposes set forth in subsection (B) of 6-1-320. Stated differently, the Board has the authority to increase the millage rate for one of the purposes set forth in section 6-1-320(B) without the approval of County Council.

Very truly yours,

Harrison D. Brant
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General