



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

April 8, 2003

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Charlotte, NC 28202

Dear Mr. Hirata:

J. Frank Baker, Superintendent, Sumter County School District Two, has requested opinions of this Office as to several issues pertaining to that District. At my request, as an attorney for the District, you have supplied your opinion as to those questions. I also requested the opinion of the Sumter County Attorney as to these questions, and he has provided his opinion to us. I appreciate the input of both you and the Sumter County Attorney, and I have carefully considered your opinions. The questions posed by Superintendent Baker are separately addressed below, some of which I have rephrased to relate to the scope of this response.

1. Is the Board of Trustees of District Two required to obtain the approval of its budget by the Sumter County Council?

I concur in your conclusion that District does not need to obtain the approval of its budget by the Sumter County Council for the reasons set forth in your letter. Although the long standing practice is for the District to obtain Council's approval, no current legislation appears to require such approval.

2. Is the Council required to approve an allocation restoring the Districts general fund balance in order to comply with S.C. Const. art. X §7(b)

Article X §7b provides that the "... whenever it shall happen that 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,

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sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year." According to the information that you and the Superintendent have provided, the District did not experience an actual deficit with insufficient funds on hand at the end of the year to meet expenditures. Instead, the District had a lower balance at the end of the 2001-2002 fiscal year than it had at the beginning of the year.

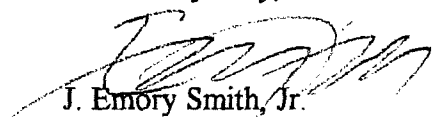
Prior opinions of this Office have concluded that surplus funds can be considered a revenue source when not allocated or appropriated. *Ops. Atty. Gen.* (January 16, 1968, March 17, 1978 and November 6, 1985). In particular, the January 16, 1968 Opinion stated that, if monies were released from the General Fund Reserve, "... such surplus funds, if and when so released, may properly be taken into account in computing whether current and continuing revenue measure are sufficient to make the [Appropriations] Act in balance." Accordingly, the funds at the beginning of the fiscal year apparently should be included in any determination of whether a deficiency exists at year end. Under the circumstances that you have described, a deficiency does not appear to exist in the 2001-2002 funds of the District under the terms of art. X §7.

3. Is the District entitled to a proportional share of penalties on delinquent taxes and interest earnings thereon?

I have located no prior opinions on the above issue, and your proposed opinion identifies no authority in South Carolina which is specific to this question other than general authority regarding interest. Because the answer to this question could affect a number of other counties and school districts, we believe that this question is best resolved by a declaratory judgment action or legislative clarification.

If you have further questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.

Assistant Deputy Attorney General