

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 88-620181

August 24, 1988

SUBJECT: Taxation & Revenue - Tax Limitation Under
Section 12-43-280.

SYLLABUS: Section 12-43-280 and the reassessment of property in Greenville County amended Act 472, Acts of 1973, to limit the millage levy of the Greenville County Recreation Commission to 3.9 mills; that being the millage that produces approximately the same revenue as the 4.5 mill levy did prior to the reassessment. If the tax levy of the district is to be increased beyond the 3.9 mill levy, the same should be done pursuant to Section 6-11-273 or Section 6-11-275.

TO: Walter H. Parham, Esquire
Greenville County Attorney

FROM: Joe L. Allen, Jr. *ja*
Chief Deputy Attorney General

QUESTION: The Greenville County Recreation Commission was provided with legislative authority to levy up to 4 1/2 mills upon taxable property within the district. This authority was conferred by Act 472, Acts of 1973.¹ Subsequently, Act 208, Acts of 1975, was adopted that limited tax increases caused by reassessment to not more than one percent more than the tax collected the year preceding reassessment. A reassessment program was implemented in Greenville County for the 1987 tax year. By reason thereof, the millage was reduced from 4.5 mills to 3.9 mills. The inquiry is whether the Commission can now increase the millage to the 4.5 mills.

APPLICABLE LAW: Sections 12-43-280, 6-11-273 and 6-11-275 of the South Carolina Code of Laws, 1976, as amended.

¹The constitutionality of this Act is not herein considered. We defer to the opinion of the Greenville County Attorney of June 13, 1984, that the Act was in conflict with the Constitution.

August 24, 1988

DISCUSSION:

As understood, the 3.9 mills now produces the same revenue as the 4.5 mills did prior to reassessment. The controlling language of Section 12-43-280 is that:

"Notwithstanding any other provisions of law, upon completion of an equalization and reassessment program as required by this article, the total ad valorem tax, for any county, school district, municipality or any other political subdivision, shall not exceed the total ad valorem tax for such county, school district, municipality or any other political subdivision for the year immediately prior to such completion by more than one percent, provided, such increase in total taxes was caused by the equalization and reassessment provided by this article. * * *."

We have previously concluded in an Opinion of July 26, 1982, that the millage would be required to be reduced. Section 12-43-280 provides that "notwithstanding" the provision of the 1973 Act, the millage had to be reduced. Such is controlling and had the effect of reducing the authorized millage from 4.5 mills to 3.9 mills.

"Where an act of the legislature is complete and independent in itself, it may change, repeal, or modify the provisions of existing statutes." 73 Am. Jur. 2d, Statutes, Section 140.

"In a case of conflict between statutes, the last legislative expression ordinarily governs." South Carolina Elec. & Gas Co. v. South Carolina Public Service Authority, 215 S.C. 193, 54 S.E.2d 777.

Here the General Assembly has provided a limitation and to now increase the millage beyond that limitation would result in a tax levy that is proscribed by Section 12-43-280.

The General Assembly has further provided in Sections 6-11-273 and 6-11-275 the methods by which the tax levy may be increased. One is by referendum and the other by action of the county council.

Walter H. Parham, Esquire
Greenville County Attorney
Page Three

August 24, 1988

CONCLUSION:

Section 12-43-280 and the reassessment of property in Greenville County amended Act 472, Acts of 1973, to limit the millage levy of the Greenville County Recreation Commission to 3.9 mills; that being the millage that produces approximately the same revenue as the 4.5 mill levy did prior to the reassessment. If the tax levy of the district is to be increased beyond the 3.9 mill levy, the same should be done pursuant to Section 6-11-273 or Section 6-11-275.

JLAJR/jws