

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 88-76 pg 228

October 6, 1988

SUBJECT: Taxation & Revenue - Tax Millage Increase
By The Marion County Board Of Education
Because Of Inflation.

SYLLABUS: The Marion County Board of Education has authority to levy the same millage as in the prior year plus an additional millage that does not exceed that which is necessary to increase revenue in an amount equal to the stated inflation factor. If the millage so levied equals or exceeds that required to meet the financial effort required by Section 12-35-1557, no further action is required to be taken by the county auditor. Should such not be the case, then the auditor must levy additional millage that is adequate to satisfy that financial effort.

TO: William H. Seals, Esquire
Marion County Board of Education Attorney

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

QUESTION: By Section 5 of Act 607, Acts of 1986, the Marion County Board of Education is authorized to levy an additional millage that does not exceed the annual inflation factor determined under the Educational Finance Act. Section 12-35-1557 provides in part that the financial effort per pupil for non-capital programs must equal the last year's budget plus an inflation factor. The auditor is directed to levy a millage to equate with this financial effort. The question is the reconciliation of the two provisions.

APPLICABLE LAW: Section 12-35-1557 of Act 607, Acts of 1986 and Section 12-35-1557, South Carolina Code of Laws, 1976, as amended.

DISCUSSION:

The two provisions are considered under settled rules of construction. First, doubt in a taxing statute is to be

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resolved against the tax and in favor of the taxpayer. (For cases, see 17 S.C.D., Statutes, Key 145.) Second is that the two statutes, if in conflict, are to be harmonized if possible. (For cases, see 17 S.C.D., Statutes, Key 223.2, et seq.) Third, is that the legislative intent is to prevail. (For cases, see 17 S.C.D., Statutes, Key 180, et seq.)

A review of the legislative acts reflects no inconsistent provisions. It should be noted that Act 607 created the Marion County Board of Education. Section 5 of the Act conferred authority to the Board to levy taxes. It provides that:

"Beginning with its 1987-88 fiscal year, the elected board of education may levy for the annual operation of the district, districts, or board without the authorization of the General Assembly by act or joint resolution, the millage authorized to be levied for these purposes for the previous year plus a millage increase which on a percentage basis does not exceed the annual inflation factor as determined under the South Carolina Education Finance Act for that year. If the board desires to levy millage in excess of these limits it may do so only with the approval of the qualified electors in the school district in a referendum called in the same manner as provided for in Chapter 9, Title 4, of the 1976 Code."

The Board without a referendum may levy the tax millage applied in the prior year and an additional millage not in excess of that determined by use of the inflation factor. Section 12-35-1557 requires the auditor to levy a tax equal to that of the prior year plus the inflation factor. It should be noted that the Act refers to millage and Section 12-35-1557 to financial effort. The millage in Section 12-35-1557 is that which is necessary to meet the financial effort provided by the section. Because of the use of the terms, there may be a substantial difference between the tax revenue raised under the 1986 Act and that required for the financial effort.

Notwithstanding, the Board possesses authority to levy the millage applied during the previous year and an additional millage that produces revenue in proportion to

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the inflation factor. If that millage produces the financial effort required by Section 12-35-1557, then there is no additional tax levy required. The auditor's responsibility is to ascertain that the required financial effort is met. If accomplished by the Board's millage levy, then the financial effort is satisfied. If the millage levy fails to meet the required effort, then in such event, the auditor is to levy the millage necessary for such.

CONCLUSION:

The Marion County Board of Education has authority to levy the same millage as in the prior year plus an additional millage that does not exceed that which is necessary to increase revenue in an amount equal to the stated inflation factor. If the millage so levied equals or exceeds that required to meet the financial effort required by Section 12-35-1557, no further action is to be taken by the county auditor. Should such not be the case, then the auditor must levy additional millage that is adequate to satisfy that financial effort.

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