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OFFICE OF THE ATTORNEY GENERAL
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OPINION NO. _____

May 26, 1987

SUBJECT: Taxation and Revenue - Levy of Barnwell County for Hospital Purposes.

- SYLLABI:
1. The millage to be used by Barnwell County for the taxation of motor vehicles licensed during 1986 was the millage applied to taxable property other than licensed motor vehicles for the 1985 tax year.
 2. The Barnwell County Council could repeal the tax levy provided in Act 298, Acts of 1953. It could also discontinue a county tax levy for hospital purposes.

TO: The Honorable Marshall B. Williams
Chairman, Senate Judiciary Committee

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

QUESTIONS: Barnwell County incurred nonbond debt for the operation of the county hospital. A tax was levied to service the debt until 1986 at which time the debt was funded from the proceeds of the lease of the hospital. Two questions are presented. First is whether the county tax millage to be applied to motor vehicles licensed in calendar year 1986 was to include the millage levied in 1985 for the debt service. Second is whether the County Council had the right to eliminate the levy of the tax for the hospital debt.

APPLICABLE LAW: Section 12-37-2640, South Carolina Code of Laws, 1976; Section 3 of Part I of Act 293, Acts of 1975; Act 298, Acts of 1953 and Act 1347, Acts of 1974.

DISCUSSION:

The Barnwell County Hospital Board was created by Act 298, Acts of 1953. That Act was amended in 1974, by Act 1347, to consolidate the Hospital and Nursing Home Boards into The Barnwell County Hospital and Nursing Home Board. The Nursing Home Board had been established by Act 1155, Acts of 1964. In none of the Acts was the Board created a body

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politic and corporate. The 1953 Act also provided for a three mill tax levy for the hospital.

The County Council was precluded from amending or repealing special acts until 1980. After January 1, 1980, the Barnwell County Council, as concerns these special acts, had the option to (a) let the Act continue, (b) repeal or amend the Act or (c) by ordinance proceed otherwise. Graham v. Creel, ___ S.C. ___, 345 S.E.2d 717 (1986).

It is our understanding that the Board was abolished by action of the County Council.

Question 1. The millage to be applied to motor vehicles licensed in 1986 was provided by § 12-37-2640. The controlling language is that:

"* * *. The millage to be applied to motor vehicles licensed during January through December of each year must be that applied to other taxable property within the county, school district, special or tax district and, if applicable, the municipality for the preceding regular tax year."

The statute language is clear and the millage applied to other taxable property for the preceding tax year was to the applicable millage.

Conclusion 1. The millage to be used by Barnwell County for the taxation of motor vehicles licensed during 1986 was the millage applied to taxable property other than licensed motor vehicles for the 1985 tax year.

Question 2. The tax here involved had been levied by the County Council as a part of its budget. In 1986, the Council found that the levy was no longer needed. Under authority of § 3, Part 1 of Act 283, Acts of 1975, the Council could amend or repeal the 1953 Act that provided for the three mill levy. Graham v. Creel, supra. It is our understanding that this was done. Additionally, because no tax revenues were needed to fund the hospital, there was no requirement for a tax.

Conclusion 2. The Barnwell County Council could repeal the tax levy provided in Act 298, Acts of 1953. It could also discontinue a county tax levy for hospital purposes.