ALAN WILSON
ATTORNEY GENERAL

June 19, 2025

Mr. Thomas K. Barlow
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P.O. Box 11367
Columbia, SC 29211

Dear Mr. Barlow:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter requests an opinion addressing the following:

> I am writing on behalf of the Superintendent of the Hampton County School District, Dr. Glenda Sheffield, to request a formal opinion from your office regarding the Hampton County School District's Board of Trustees' budgetary and taxing powers under Act 184 of 2020.
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> By way of background, Act 184 of 2020 provided for the consolidation of Hampton County School Districts One and Two. As part of the Act, specific requirements for the consolidated school district's annual operating budget and tax levies were established for years 2021 through 2024. (Section 5(A) of the Act.) Thereafter, commencing in 2025, Section 5(B) of the Act provides in regard to millage rate setting authority:
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> > Beginning in 2025, in order to obtain funds for school purposes the board of trustees is authorized to impose an annual tax levy upon approval of the county governing body, exclusive of any millage imposed for bond debt service. Upon certification to the county auditor of the tax levy to be imposed, the auditor shall levy and the county treasurer shall collect the millage so certified upon all taxable property in the district. Upon approval of the county governing body, the consolidated school district may raise its millage by no more than two mills over that levied for the previous year, in addition to any millage needed to adjust for the EFA inflation factor and sufficient to meet the requirements of Section 59-21-1030. An

> increase above this two mills for operations may be levied only after a majority of the registered electors of the district vote in favor of the millage increase in a referendum called by the county governing body and conducted by the county election commission at the same time as the general election. To the extent the provisions of this section relating to increases in school millages conflict with the provisions of Section 6-1-320, relating to the millage rate increase limitation, the provisions of Section 6-1-320 control.

And, in regard to the Board of Trustees' budgetary authority, the Act, Section 3, provides:

> Section 3(B). The Hampton County School District Board of Trustees has the power, duty, and responsibility provided by law including to: ... (3) adopt the annual school budget.

Notably, nowhere in the Act does the governing body of the county have any express authority to review or approve the school district's annual budget. See also Fairfield County School District v. State of South Carolina, 395 S.C. 276, 285, 718 S.E. 2d 210, 214 (2011) (Justice Beatty, concurring) (stating "[b]udget making authority is inherent in the board of trustees' management and control mandate.") Further, the title of the Act specially states that it is an act "... to provide that beginning in 2025, the Hampton County School District is authorized to approve an annual tax levy in order to obtain funds for school purposes as provided in this Act." See, e.g., Kennedy v. South Carolina Retirement System, 345 S.C. 339,349,549 S.E.2d 243, 248 (200l) (discussing determining legislative intent and interpretation of an act in light of its title).

Due to past and current conflict between the Hampton County Council and the school district's Board of Trustees regarding the scope of their respective authority over the school district's annual operating budget and authority to establish the millage rate for school district operations and levy school taxes, the Superintendent is respectfully asking for your office's opinion on the following issues:

1. Whether the Board of Trustees has the exclusive power to determine the school district's annual operating budget, as specified in Section 3(B)(3) of the Act.

2. Whether, the County Council's approval of the Board of Trustees' proposed annual operating tax millage rate and tax levy is ministerial, and whether upon approval of the millage rate and tax levy by County Council, it is the Board of Trustees under Section 5(B) of the Act that certifies to the county auditor the tax levy to be imposed and has the authority to levy the school district's operating tax

millage, and if so, whether the Board of Trustees is the "local governing body" for purposes of S.C. Code § 6-1-320. (See, e.g., Op. S.C. Att'y Gen., 2012 WL 1154974 (March 30, 2012).)

3. Whether, in the event application of the provisions of 6-1-320 allows for a school tax levy greater than would be authorized under the provision of the Act limiting school operating tax millage to an increase of "no more than two mills over that levied for the previous year, in addition to any millage needed to adjust for the EFA inflation factor and sufficient to meet the requirements of Section 59-21-1030," a conflict between the Act's limitation and section 6-1-320 would arise, such that, under Section 5(B) of the Act, section 6-1-320 would control.

Law/Analysis

It is this Office's opinion that 2020 Act No. 184, § 3(B)(3) assigns the Board of Trustees (the "Board") the responsibility to "adopt the annual school district budget." Section 3(B)(3) lists no other body with such authority.

It is this Office's opinion that the county council's approval authority over the tax millage is not ministerial. While 2020 Act No. 184, § 5(B) assigns the taxing power to the Board, the county council is granted approval authority. We recently advised that under the Act's plain language "Hampton County Council ... hold[s] discretionary authority to approve or reject the proposed millage submitted by the school district board of trustees." Op. S.C. Att'y Gen., 2025 WL 1421483 (May 5, 2025). Another recent opinion examined a comparable local law that assigned county council with approval authority over its countywide school district's budget.

> [A]t least one court decision has articulated that county council oversight of a school district's operating budget and determinations regarding millage are "subject to the exercise of good faith and for an appropriate purpose." Jasper County Board of Educ. v. Jasper County Council, No. 2013CP2700362, 2013 WL 8477933, at *4 (S.C.Com.Pl. Oct. 22, 2013). Your letter notes that state law requires a county council's approval or rejection of a proposed budget to comply with specific minimum funding levels for the school district. See Richland Cnty. Sch. Dist. One v. Richland Cnty. Council, 310 S.C. 106, 111, 425 S.E.2d 747, 749–50 (1992) (holding S.C. Code § 59-21-1030 did not authorize county auditor to "unilaterally reduce" millage below the minimum local effort set by school district board of trustees). Certainly, this Office agrees that the county council's approval or rejection of a proposed school district budget must not create a conflict with funding mandates called for under state law. Ultimately, county council and the Board will have to reach an agreement on a budget, or our state courts may order their

> compliance. See Dorchester Cnty. Sch. Dist. Three v. Dorchester Cnty. Council, 289 S.C. 475, 475–76, 347 S.E.2d 93, 93–94 (1986).

Op. S.C. Att'y Gen., 2025 WL 1287707 (April 15, 2025). Similarly, here, county council's authority should also be exercised in good faith, for an appropriate purpose, and consistent with mandatory funding levels under state law.

Further, it is our opinion that the Board is the "local governing body" under S.C. Code § 6-1-300(3). "As used in Section 6-1-320 only, local governing body also refers to the body authorized by law to levy school taxes." The 2020 Act states the "board of trustees is authorized to impose an annual tax levy." While the tax levy is subject to county council's approval, the Board is the body authorized to levy the tax.

Finally, your third question asks if a conflict between section 5(B) of the 2020 Act and S.C. Code § 6-1-320 arose, would the provision in section 6-1-320 control. Unfortunately, as is discussed further below, the rules of statutory construction do not provide a definitive answer, and this Office strongly suggests seeking judicial or legislative clarification on this point. The primary rule of statutory construction is "that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 440 S.E.2d 364 (1994). However, a court will not interpret a statute according to the plain and ordinary meaning when it would produce an absurd result that could not have been intended by the Legislature. See J.T. Baggerly v. CSX Transp., Inc., 370 S.C. 362, 373, 635 S.E.2d 97, 103 (2006) ("Nonetheless, however plain the ordinary meaning of the words used in a statute may be, we will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature or would defeat the plain legislative intention."); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) ("[C]ourts are not confined to the literal meaning of a statute where the literal import of the words contradicts the real purpose and intent of the lawmakers."). Lastly, "[a] statute should be so construed that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous...." Matter of Decker, 322 S.C. 215, 219, 471 S.E.2d 462, 463 (1995) (citing 82 C.J.S. Statutes § 346). With these principles in mind, this opinion will examine the text of section 5(B) of the 2020 Act and S.C. Code § 6-1-320 to ascertain legislative intent regarding potential conflicts.

The first sentence of section 5(B) authorizes the Board to "impose an annual tax levy upon approval of the county governing body, exclusive of any millage imposed for bond debt service." The plain language of this sentence demonstrates legislative intent to authorize the Board to levy taxes to fund the operations of the school district with the county council having approval authority except as to bond debt service. The second sentence directs "the auditor shall levy and the county

treasurer shall collect the millage" after receiving certification of the tax levy. The third sentence states:

> Upon approval of the county governing body, the consolidated school district may raise its millage by no more than two mills over that levied for the previous year, in addition to any millage needed to adjust for the EFA inflation factor and sufficient to meet the requirements of Section 59-21-1030.

Id. This provision establishes an annual cap to millage increases of two mills over the previous year plus millage to satisfy the EFA inflation factor and the requirements of section 59-21-1030. The fourth sentence states:

> An increase above this two mills for operations may be levied only after a majority of the registered electors of the district vote in favor of the millage increase in a referendum called by the county governing body and conducted by the county election commission at the same time as the general election.

Id. This provision establishes a mechanism to exceed the two mills annual increase cap in the previous sentence by holding a referendum. The plain language expresses no limit on the millage increase that may be authorized via a referendum.

Finally, the last sentence of section 5(B) states, "To the extent the provisions of this section relating to increases in school millages conflict with the provisions of Section 6-1-320, relating to the millage rate increase limitation, the provisions of Section 6-1-320 control." This plain language restricts the conflict provision to issues "relating to increases in school millages" in section 5(B) and "relating to the millage rate increase limitation" in section 6-1-320. A court may well interpret this language to limit the conflict provision solely to the third sentence imposing the cap of two mills over the previous year's levy with the qualifications for the EFA inflation factor and section 59-21-1030 as that sentence only addresses "increases in school millages." A court could also find the conflict provision applies to the fourth sentence addressing the referendum for increases "above this two mills" because, again, this also addresses increases in school millages. If a court finds the conflict provision is applicable to both the third and fourth sentences, then it could set the millage rate increase that county council is permitted to approve at the millage rate authorized by section 6-1-320 and any rate increase beyond that could be authorized if approved by referendum. In other words, a court could construe this provision in such a way that section 6-1-320 would replace "two mills" in sentences three and four with the millage rate increase allowed under section 6-1-320. For example, in a given year section 6-1-320 could authorize an increase of three mills and if county council were to approve an increase up to that three mills, it could do so under the provisions of sentence three. And for example, if in that same year that the three mills

rate increase is authorized by section 6-1-320, county council could call for a referendum on an increase greater than three mills. In such as case, county council could approve an increase of three mills and call for a referendum on an additional two mills that in total would raise the millage by five mills if the electors voted in favor of it.

However, the plain language of the conflict provision states it applies when there is a "conflict with the provisions of [s]ection 6-1-320," not when the millage rate increase allowed under 6-1-320 is greater than that allowed under section 5(B). Read literally, the conflict provision would apply at any millage level authorized under section 6-1-320. Subsection 6-1-320(A) permits a local governing body to:

> 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 Revenue and Fiscal Affairs Office.

Id. Subsection 6-1-320(B) allows the local governing body to suspend the rate cap in subsection (A) in seven exceptional circumstances by two-thirds vote of the local governing body.[1]

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[1] 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. The local governing body shall enact an ordinance authorizing such purchase and the ordinance must state the nature and extent of the potential residential encroachment, how the purchased property or development rights would be used and specifically how and why this use would be beneficial to the United States military base,

Subsection 6-1-320(C) clarifies that the "millage increase permitted by subsection (B) is … an additional millage levy above that permitted by subsection (A)." As sections (A), (B), and (C) relate to the "millage rate increase limitation," a court would likely interpret the Legislature intended these subsections to be considered when determining if there is a conflict with the calculated millage rate increase. With this summarized explanation of the millage rate increase limitations in section 6-1-320, it seems highly improbable that the rate increase authorized thereunder will often, if ever, exactly match the two mills authorized in section 5(B) of the 2020 Act. As a result, the increase authorized under section 6-1-320 would practically be the true millage rate cap and the two mill cap in section 5(B) is a superfluous placeholder. See Matter of Decker, supra. It is this Office's opinion that a court would not adopt this construction because it would negate the two mills annual rate increase cap in all instances where it is not in conflict, and would instead construe the section 6-1-320 to control only where under its terms the millage rate increase limitation is greater than two mills.

Finally, it is this Office's opinion that a court would find the conflict provision only imposes the millage rate increase limitation from section 6-1-320 rather than also implement the procedures calling for the local governing body to increase the rate as called for under subsection (A) or requiring a two-thirds majority to suspend the rate limitation as required in subsection (B). The conflict provision states that "the provisions of Section 6-1-320, relating to the millage rate

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> and what the impact would be to the United States military base if such purchase were not made. Millage rate increases for the purpose of such purchase must be separately stated on each tax bill and must specify the property, or the development rights to be purchased, the amount to be collected for such purchase, and the length of time that the millage rate increase will be in effect. The millage rate increase must reasonably relate to the purchase price and must be rescinded five years after it was placed in effect or when the amount specified to be collected is collected, whichever occurs first. The millage rate increase for such purchase may not be reinstated unless approved by a majority of the qualified voters of the governmental entity voting in a referendum. The cost of holding the referendum must be paid from the taxes collected due to the increased millage rate; or (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 or national forest land. For purposes of this section, "capital equipment" means an article of nonexpendable, tangible, personal property, to include communication software when purchased with a computer, having a useful life of more than one year and an acquisition cost of fifty thousand dollars or more for each unit.

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.

S.C. Code § 6-1-320(B).

increase limitation" control over a conflict with the provisions of section 5(B) "relating to increases in school millage." The qualification that the provisions of 6-1-320 control could be interpreted broadly to impose not only the millage rate increase limitation, but also the procedures for imposing the increase. Therein, the local governing body is authorized to increase the millage rate within the limits established. If the procedures for adopting the millage increases in section 6-1-320(A) and (B) are held to control over the provisions in section 5(B), all provisions establishing the county council's approval authority and calling for a referendum would also be rendered superfluous. See Matter of Decker, supra. A court would likely seek to avoid this result. One construction that avoids that result is to hold that only the millage rate limit in section 6-1-320, and not its procedures, control over those terms in section 5(B).

Conclusion

As is discussed more fully above, it is this Office's opinion that 2020 Act No. 184, § 3(B)(3) assigns the Board of Trustees (the "Board") the responsibility to "adopt the annual school district budget." It is this Office's opinion that the county council's approval authority over the tax millage is not ministerial. County council's authority should also be exercised in good faith, for an appropriate purpose, and consistent with mandatory funding levels under state law. Further, it is our opinion that the Board is the "local governing body" under S.C. Code § 6-1-300(3).

Finally, you letter asks if a conflict between section 5(B) of 2020 Act No. 184 and S.C. Code § 6-1-320 arose, would the provision in section 6-1-320 control. Unfortunately, the rules of statutory construction do not provide a definitive answer, and this Office strongly suggests seeking judicial or legislative clarification on this point. A court may well interpret the conflict provision in section 5(B) to apply solely to its third sentence imposing the cap of two mills over the previous year's levy with qualifications for the EFA inflation factor and section 59-21-1030. A court could also find the conflict provision applies to the fourth sentence addressing the referendum for increases "above this two mills" because, again, this also addresses increases in school millages. If a court finds the conflict provision is applicable to both the third and fourth sentences, then it could set the millage rate increase that county council is permitted to approve at the millage rate authorized by section 6-1-320 and any rate increase beyond that could be authorized if approved by referendum. We caution that while this is one possible interpretation that this Office views as consistent with legislative intent, it is not supported by the plain language of 2020 Act No. 184, § 5(B). Yet, it escapes the absurd result of eviscerating much of the legislation's provisions that would be called for by a literal application of the conflict provision. This conclusion is not free from doubt, and we strongly advise seeking judicial or legislative clarification as to how the millage rate limitation should be construed when it is in conflict with S.C. Code § 6-1-320.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General