



ALAN WILSON
ATTORNEY GENERAL

October 18, 2021

The Honorable Rex F. Rice
Member
South Carolina Senate
P.O. Box 142
Columbia, South Carolina 29202

Dear Senator Rice:

We received your letter requesting an opinion of this Office concerning the ability of a county to exceed the millage rate limitation imposed by section 6-1-320 of the South Carolina Code (Supp. 2020) to create a reserve account for the county's roads department. In your letter, you explain the Pickens County Council is repealing its road use fee in light of the Supreme Court's recent ruling that a similar fee imposed by Greenville County is unconstitutional. You state:

In order to make up for the shortfall resulting from the road use fee's repeal, County Council is proposing to increase its millage rate beyond that which is permissible under S.C. Code Ann. §6-1-320(A) by establishing a reserve account for the road department – purportedly pursuant to S.C. Code Ann. § 6-1-320(D).

To my knowledge, the County's general fund account contains \$38 million. Of that amount, \$7 million is assigned and \$8 million is needed for cash flow. That leaves \$23 million in reserve for department access – including the roads department – if needed. Therefore, the proposed reserve account for the roads department would be a specially designed reserve within a reserve with a dedicated funding stream. That appears to me to be a violation of Act 388.

Accordingly, you ask “[d]oes this proposal by the Pickens County Council violate the General Assembly’s intent with regard to Act 388? Does this proposal violate the terms of Act 388?”

Law/Analysis

As we explained in a 2020 opinion, Act 388 of 2006, known as the Property Tax Reform Act, “created a hard cap on increases in millage rates imposed for operating purposes by municipalities, counties, special purpose districts, via amendments to section 6-1-320 of the South Carolina Code” Op. Att’y Gen., 2020 WL 1068930 (S.C.A.G. Feb. 25, 2020). Section 6-1-320(A)(1) of the South Carolina Code (Supp. 2020) limits millage rate increases

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.

However, section 6-1-320 provides for several circumstances in which governing bodies can exceed this limitation. Included among these is section 6-1-320(D), which states:

The restriction contained in this section does not affect millage that is levied to pay bonded indebtedness or payments for real property purchased using a lease-purchase agreement or used to maintain a reserve account. Nothing in this section prohibits the use of energy-saving performance contracts as provided in Section 48-52-670.

(emphasis added).

Your question to us is whether this provision allows Pickens County to create a reserve account to fund the roads department. To answer this question, we turn to the rules of statutory interpretation, the primary of which is to ascertain the intent of the Legislature. Gordon v. Phillips Utilities, Inc., 362 S.C. 403, 406, 608 S.E.2d 425, 427 (2005).

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (citation omitted). The text of a statute as drafted by the legislature is considered the best evidence of the legislative intent or will. See id. “If a statute’s language is plain, unambiguous, and conveys a clear meaning, then the rules of statutory interpretation are not needed and a court has no right to impose another meaning.” Strickland v. Strickland, 375 S.C. 76, 88, 650 S.E.2d 465, 472 (2007) (citation omitted). “The Court will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation.” Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009) (citation omitted).

Transportation Ins. Co. & Flagstar Corp. v. S.C. Second Inj. Fund, 389 S.C. 422, 429, 699 S.E.2d 687, 690 (2010).

In a recent opinion, we explained:

This Office has stated repeatedly that in enacting section 6-1-320, the Legislature intended to limit governing bodies from increasing property taxes.

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See Ops. S.C. Att’y Gen., 2017 WL 569539 (Jan. 20, 2017); 2014 WL 3640923 (July 9, 2014); 2010 WL 4391632 (October 26, 2010). We have emphasized “that tax increases and new taxes are disfavored as evidenced by clear intent by our General Assembly.” 2017 WL 569539 (citing S.C. Code Ann. §§ 6-1-320, 6-1-310).

Op. Att’y Gen., 2019 WL 1644925 (S.C.A.G. Feb. 27, 2019). With this intent in mind, we turn to the text of the statute, which allows a governing body to exceed the millage limitation in section 6-1-320(A) when the millage levied is used “to maintain a reserve account.” The Legislature does not provide additional detail regarding the uses for the “reserve account.” Our courts instruct:

When faced with an undefined statutory term, the Court must interpret the term in accord with its usual and customary meaning. Strother v. Lexington County Recreation Comm’n, 332 S.C. 54, 504 S.E.2d 117 (1998). Courts should consider not merely the language of the particular clause being construed, but the undefined word and its meaning in conjunction with the purpose of the whole statute and the policy of the law.

Branch v. City of Myrtle Beach, 340 S.C. 405, 409–10, 532 S.E.2d 289, 292 (2000). Black’s Law Dictionary defines “reserve” as “[s]omething retained or stored for future use; esp., a fund of money set aside by a bank or an insurance company to cover future liabilities.” RESERVE, Black’s Law Dictionary (11th ed. 2019); see also Defeo v. Cmty. Servs. Assocs., Inc., 2007 WL 8327948 (S.C. Ct. App. July 24, 2007) (adopting this definition in regard to the use of the term “reserve” on a real estate plat). Moreover, in a 1990 opinion, this Office consider the meaning of “reserve” in regard to whether governing bodies may levy taxes or make appropriations for a contingency or reserve fund. Op. Att’y Gen., 1990 WL 599240 (S.C.A.G. Mar. 12, 1990). We found: “The word ‘reserve’ means to set aside for future use. Id. (citing Webster’s Ninth New Collegiate Dictionary).

Thus, given the plain and ordinary meaning of the term “reserve,” we believe the Legislature allowed governing bodies to exceed the millage rate cap when they found it necessary to establish a fund for a future use. However, we believe this exception to section 6-1-320(A) must be read narrowly and in keeping with the Legislature’s intent in regard to Act 388. As such, we do not believe such a reserve could be used as a dedicated funding stream for ongoing expenses as this would run afoul of the Legislature’s intent to limit governing bodies from increasing property taxes for normal operations. However, we also recognize there may be large road projects that necessitate the establishment of a reserve fund. We can foresee that some road projects are so large and expensive they could not be paid for with general fund revenue and require a county to plan ahead for funding just as it would for the repayment of bonds or the purchase of real property also contemplated in 6-1-320(D).

Based solely on the information provided in your letter, it sounds as if Pickens County is seeking to replace the ongoing revenue it lost from the repeal of the road maintenance fee with an additional

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millage above the cap to fund ongoing expenses related to roads. While some of the millage may in fact be used to fund a reserve account for future road expenses, we are concerned that it may also be used to fund current expenses related to roads. In which case, we do not believe the millage rate cap could be exceeded based on section 6-1-320(D). However, exactly how the funds are being used is a factual question. In numerous opinions, this Office stated we cannot make factual determinations in an opinion. Op. Att’y Gen., 2021 WL 4057054 (S.C.A.G. Aug. 27, 2021). Unlike a court, “this Office does not have the jurisdiction . . . to investigate and determine facts.” Op. Att’y Gen., 2015 WL 4497734 (S.C.A.G. July 2, 2015). As such, we cannot conclusively opine as to whether the proposal by Pickens County Council violates act 388, but advise that if Pickens County aims to exceed they millage rate cap in order to create a reserve fund pursuant to section 6-13-320(D), such funds should be reserved for future expenditures.

Conclusion

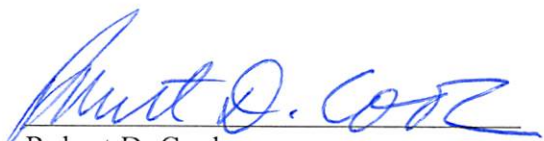
One of the primary purposes of Act 388 of 2006 was to set a cap on the millage rates imposed by local governments for operating purposes through the amendment to section 6-1-320. While section 6-1-320(D) creates an exception to this millage rate limitation for millage “used to maintain a reserve account,” we believe this exception should be read narrowly to effectuate the Legislature’s desire to limit governing bodies from increasing property taxes. Given the ordinary meaning of the term “reserve,” we believe the Legislature intended to allow local governing bodies the ability to exceed the millage rate limitation found in section 6-1-320(A) when there is a specific need to set funds aside for a future use. The determination of how Pickens County intends to use funds generated by the excess millage above the cap is a factual determination and therefore, beyond the scope of an opinion of this Office. Thus, we cannot conclusively determine whether the proposal being considered by the Pickens County Council violates the terms of Act 388. Pickens County may very well find it necessary to set funds aside for future needs relating to its roads. However, we do not believe it may use this exception to exceed the millage rate limitation to fund ongoing road operating expenses.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General