



ALAN WILSON  
ATTORNEY GENERAL

September 21, 2022

Chris Harmon  
Lexington County Auditor  
212 South Lake Drive  
Lexington, SC 29072

Dear Mr. Harmon:

You have requested an opinion from this Office regarding “the legal and official duties of the county auditor with regard to school district bond debt millage rates.” You have presented us with several questions and each question will be addressed in turn.

### LAW/ANALYSIS

We will review the South Carolina Code of Laws to provide you with a general answer to your questions. Please be aware, however, that our response to your questions could be affected or changed if a Lexington County school district’s issuance of bonds is governed by special legislation. Additionally, we defer to the South Carolina Department of Revenue’s interpretation of state laws regarding school millage.<sup>1</sup>

Pursuant to the School Bond Act (“Act”),<sup>2</sup> school districts are authorized to issue general obligation bonds “for the purpose of defraying the cost of capital improvements to any amount

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<sup>1</sup> In Op. S.C. Atty. Gen., 2001 WL 564572 (March 28, 2001) (citations omitted), we stated:

[t]his Office, as a matter of policy, typically defers to the administrative interpretation of the agency charged with the enforcement of the statute in question. As we have emphasized in earlier opinions “construction of a statute by the agency charged with executing it is entitled to the most respectful consideration [by the courts] and should not be overruled absent cogent reasons.” If the administrative interpretation is reasonable, courts will defer to that construction even if it is not the only reasonable one or the one the court would have adopted in the first instance.

<sup>2</sup> S.C. Code Ann. § 59-71-10 et seq (1976 Code, as amended).

not exceeding the constitutional debt limitation” if certain conditions are met.<sup>3</sup> S.C. Code Ann. § 59-71-30 (1976 Code, as amended). The school districts determine the maturity of the general obligation bonds (with certain exceptions); where the bonds are paid; the interest rates of the bonds; and the manner of execution of the bonds. See S.C. Code Ann. § 59-71-70; 59-71-100; 59-71-110; 59-71-120 (1976 Code, as amended).

### Questions Presented

Question 1: What is the statutory role of the Lexington County Auditor with regard to determining millage rates for a school district’s debt service?

The Act establishes the role of a county auditor in the payment of school bond debt:

For the payment of the principal and interest on such bonds as they respectively mature and for the creation of such sinking fund as may be necessary therefor the full faith, credit and resources of the operating school unit are irrevocably pledged and there shall be levied annually by the auditor of each county wherein such operating school unit is located, and collected by the treasurer of such county in the same manner as county taxes are levied and collected, a tax, without limit, on all taxable property in such operating school unit sufficient to pay the principal and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

S.C. Code Ann. § 59-71-150 (1976 Code, as amended).

In Stackhouse v. Floyd, 248 S.C. 183, 198, 149 S.E.2d 437, 445–46 (1966), our State Supreme Court considered an auditor’s function regarding school bond debt:

Plaintiffs also contend that the Act is unconstitutional in that it delegates to the Auditor the authority to tax and the discretion to fix the amount of the tax to be levied to provide debt service on the bonds. The Act, however, gives no such discretionary power to the Auditor but rather compels him to levy annually ‘a tax sufficient to pay the principal and interest of the bonds as they respectively mature and to create such sinking fund as may be necessary therefor.’ The amount of the levy, therefore, is

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<sup>3</sup> Included in these conditions is that a majority of voters in an election voted in favor of the purpose and the amount of bonds to be issued. See S.C. Code Ann. § 59-71-30(1); 59-71-40; 59-71-50 (1976 Code, as amended).

established by the maturity schedule of the bonds and the interest rate.

The Auditor acts in a ministerial fashion as the agent of the General Assembly in this matter.

Relying on Stackhouse, our Office explained an auditor's duty in section 59-71-150 as:

The statute, by its language, levies the tax for the repayment of the bonds. There is no discretion vested in the governing body or other officials thereof as to whether the tax is to be levied. The only task is for the auditor to determine the number of mills necessary to raise the required revenue.

Op. S.C. Atty. Gen., 1985 WL 165994 (March 20, 1985).

We described how an auditor implements this duty:

The statute, by its express language, imposes the duty upon the County Auditor to calculate the amount of tax due and enter the same upon the tax duplicate. The County Treasurer is required to collect the tax so levied. The levy is the mathematical determination of the amount of tax due and the entry thereof upon the tax duplicate.

Op. S.C. Atty. Gen., 1986 WL 192047 (Aug. 11, 1986).

We have further opined on an auditor's responsibilities regarding school bond debt:

[i]t is not the responsibility of the county auditor to question what is or is not debt service. Instead, the determination of such amount is to be made solely by the school's governing body with the amount needed then reported to the county auditor in order to set the tax levy. When a bond is issued or indebtedness created, the auditor is required to levy a tax to provide for the debt service on the bonds. Therefore, a county auditor is required to levy and collect the amount required for payment of general obligation bonds - in this instance, to levy and collect the amount to pay the debt service on the general obligation bond for that year. The auditor is not an approving body but, assuming the proper form is observed, is bound by law to act.

Op. S.C. Atty. Gen., 2005 WL 1983352 (July 6, 2005).

Pursuant to section 59-71-150, a county auditor levies the tax and calculates the amount due on each piece of taxable property in order to raise the required revenue. His role is purely ministerial, because he is not granted any discretion regarding the levying of the tax or the amount of the tax, which is determined by the terms of the bonds.

Question 2: Are millage rates only calculated based on existing bonds or can the millage rates be determined to include future bonds that have not been issued at the time when the millage rates are provided to the county auditor?

Pursuant to section 59-71-150, an auditor levies a tax in an amount “sufficient to pay the principal and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor.” As such, the auditor calculates the millage based on the bond issued pursuant to the Act and not on speculation as to bonds the school district may or may not decide to issue.

In Stackhouse v. Floyd, 248 S.C. at 198, 149 S.E.2d at 445–46, the Court found that the “amount of the [tax] levy . . . is established by the maturity schedule of the bonds and the interest rate.” Furthermore, our Office has considered whether a tax levied for payment of bond debt could be used to pay the principal and interest on a new bond issued. See Ops. S.C. Atty. Gen., 1991 WL 633079 (Nov. 22, 1991); 1979 WL 29040 (Feb. 27, 1979). Based on section 59-71-150 and on the South Carolina Constitution, we concluded that the tax could not be used to pay the new bond. Id. We stated that the tax in section 59-71-150 is “levied only for the purpose of funding the bond debt.” Op. S.C. Atty. Gen., 1991 WL 633079. We also explained that article X, section 5 of the South Carolina Constitution<sup>4</sup> “again necessitates that the tax levy state the purpose for which the tax was levied,” so it “necessarily implies the application of the tax to the purpose for which the same was levied.” Id.

In another opinion, we opined that Article X, section 5 could not be complied with if the funds from a tax levied to pay a bond were used to pay bonds issued in subsequent tax years, “because no liability existed for the unissued bonds when the tax was collected.” Op. S.C. Atty. Gen., 1979 WL 29040. We determined:

It is understood that the bonds for which the tax was collected have not fully matured and that a liability for payment continues to exist. Under such, the ‘surplus’ funds cannot be diverted to payment of the principal and interest of a new bond issue. The

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<sup>4</sup> S.C. Const. art. X, § 5 provides:

No tax, subsidy or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.

surplus constitutes a part of the sinking fund . . . . for payment of the presently issued and unpaid bonds.

Id. Accordingly, it is our opinion that a millage rate is calculated based on existing bonds.

You have asked us to review section 59-71-155, particularly subsection (A), in relation to your question. Section 59-71-155 provides:

(A) This section applies to existing and future general obligation bonds issued by an operating school unit. For purposes of this section, general obligation bonds are obligations expressly secured by the full faith, credit, and taxing power of the operating school unit that issues the bonds.

(B) The county treasurer of a county in which any operating school unit has outstanding general obligation bonds shall notify the State Treasurer on the fifteenth day prior to the due date of any payment of principal or interest on the bonds if the county treasurer does not have on deposit, or there is not on deposit with a paying agent, the sum required to make that payment. If the county treasurer or paying agent does not have on deposit the sum required to make that payment on the third business day prior to the due date, the State Treasurer shall transfer to the county treasurer from the general fund of the State the sum necessary to enable the county treasurer or paying agent to make payment of principal and interest then coming due . . . .

(E) A county auditor in any county in which the provisions of subsection (B) have been implemented for the payment of principal and interest on the general obligation bonds of an operating school unit shall adjust the millage levied for the payment of those bonds in the next fiscal year to the level necessary to provide for the punctual payment of all sums due during that year and shall file a report with the State Treasurer demonstrating compliance with this subsection not later than five business days after setting the millage for this fiscal year.

S.C. Code Ann. § 59-71-155 (emphasis added).

Section 59-71-155(A) provides that “this section applies to existing and future general obligation bonds issued by” a school district. We advised in a prior opinion that section 59-71-155 is known as the “Statutory Intercept.” See Op. S.C. Atty. Gen., 2014 WL 4165337 (Aug. 8, 2014). We explained that “the obvious purpose of the Statutory Intercept is to remedy a school district's

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impending default on outstanding general obligation debt by advancing funds to satisfy such debt from the State's general fund.” Id.

Based on our August 8, 2014 opinion, we believe that legislative intent was for section 59-71-155 in its entirety to apply to bonds that have been issued, whether they were issued prior to or after the enactment of section 59-71-155. Section 59-71-155 does not contradict our conclusion that a millage rate is calculated based on existing bonds and does not include future bonds that have not yet been issued.

Question 3: Does the county auditor have any authority in determining the sinking fund amount to be used to pay the bond debt?

An auditor has certain responsibilities regarding a sinking fund:

A sinking fund should be in an amount sufficient to meet the bond indebtedness with interest that matures and is payable in the next ensuing year. The County Auditor is to calculate and levy the amount of tax necessary therefor and the County Treasurer is to collect the same.

Op. S.C. Atty. Gen., 1986 WL 192047 (Aug. 11, 1986).

We have further explained:

Under S.C. Code Ann. Section 59–71–150, the auditor has the duty to ensure that the sinking fund is sufficient to satisfy the principal on the bonds that will become due (either by way of maturity or redemption) during the next ensuing year and to ensure the sinking fund is sufficient to pay the interest due to the bondholders for the next ensuing year. If the sinking fund is sufficient to satisfy this duty, “[t]he sinking fund should be used for that purpose and the next tax levy made when the amount in the fund would be insufficient to make similar payments.” 1979 OAG No. 79–95. The calculation of the amount of the levy must consider the existing balance in the sinking fund after payment of past and current obligations. 1986 OAG No. 86–89.

Op. S.C. Atty. Gen., 1992 WL 575648 (July 29, 1992). Therefore, the county auditor must ensure that the amount of the sinking fund is sufficient to pay the principal and interest of the bonds which come due in the next ensuing year.

Question 4: Is it the duty of the county auditor to determine if a school district is setting its millage rates per their legal debt limit?

Question 5: Is it the duty of the county auditor to determine if a school district is being fiscally responsible or conservative with its bond debt and capital projects?

Questions 4 and 5 have a similar answer and are best answered together. Pursuant to the School Bond Act, school districts are authorized to issue general obligation bonds for capital improvements in “any amount not exceeding the constitutional debt limitation.” S.C. Code Ann. § 59-71-30. Accordingly, it is the school district’s responsibility to not exceed the constitutional debt limit as doing so would exceed the authority given to them under the School Bond Act.

Furthermore, section 59-71-150 provides for the limited duties of the auditor regarding school bond debt - to levy an annual tax sufficient to pay the principal and interest on school bonds and to create a sinking fund. The auditor is not authorized to determine if the tax should be levied or the amount of the tax. As we have previously stated, “it is not the responsibility of the county auditor to question what is or is not debt service” because “the determination of such amount is to be made solely by the school's governing body.” Op. S.C. Atty. Gen., 2005 WL 1983352 (July 6, 2005).

### CONCLUSION

In conclusion, we emphasize that our response to your questions could be affected or changed if a Lexington County school district’s issuance of bonds is governed by special legislation. We also defer to any interpretation of state laws regarding school millage by the South Carolina Department of Revenue.

Pursuant to section 59-71-150 of the School Bond Act, a county auditor levies a tax and calculates the amount due on each piece of taxable property in order to pay the principal and interest on the school bonds and to create a sinking fund. He ensures that the amount of the sinking fund is sufficient to pay the principal and interest of the bonds which come due in the next ensuing year. His role is purely ministerial, because he is not granted any discretion regarding the levying of the tax or the millage rate, which is calculated based on existing bonds.

The school districts, and not the county auditor, are responsible for issuing bonds in an amount not exceeding the debt limit. As we stated in a prior opinion, “it is not the responsibility of the county auditor to question what is or is not debt service” because “the determination of such amount is to be made solely by the school's governing body.” Op. S.C. Atty. Gen., 2005 WL 1983352 (July 6, 2005).

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Sincerely,



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REVIEWED AND APPROVED BY:



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