ALAN WILSON
ATTORNEY GENERAL

April 15, 2025

C.D. Rhodes, III, Esq.
County Attorney
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P.O. Box 11509
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Dear Mr. Rhodes:

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

> On behalf of Clarendon County Council ("County Council" or the "Council"), the governing body of Clarendon County, South Carolina (the "County"), as County Attorney for the County, I respectfully request an opinion of the South Carolina Attorney General regarding the matter referenced above, as explained in greater detail below.
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> The South Carolina General Assembly recently enacted H-3792 (Rat. Num. 0006), which was signed by the Governor of South Carolina on March 7, 2025 (the "2025 Act"). The 2025 Act amended Act 106 of 2021 (the "2021 Act"), which consolidated all school districts within the County into the Clarendon County School District (the "School District"), established an elected Clarendon County School District Board of Trustees (the "School Board") to govern the School District, and, among other things, gave the School Board the power to adopt an annual budget and levy property taxes to fund the operations of the School District. Among other amendments, the 2025 Act amended the 2021 Act to strike the provisions empowering the School Board to adopt a budget and levy property taxes, and replaced those provisions with a requirement that the School Board receive the County Council's approval for its annual budget. …
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> The enactment of the 2025 Act has raised questions regarding the correct procedure that the County Council must follow to fulfill its responsibilities concerning the School District's annual budget. The 2025 Act does not clearly state

whether action by the School Board to adopt the School District's annual budget or action by the County Council to approve the School District's annual budget constitutes the essential legislative action necessary to appropriate funds and levy property taxes for School District operations. This ambiguity raises a number of questions concerning the nature of County Council's actions under the 2025 Act and the proper procedures that County Council must follow in connection with these actions. To ensure that County Council follows the correct procedures, I ask that you consider the following questions:

1. Does the School Board or County Council have the responsibility to comply with the requirements of S.C. Code Ann. § 6-1-80 to hold a public hearing concerning the School District's annual budget?

2. Should the County Council's action to approve the School District's annual budget be considered legislative in nature, such that this action must be taken by ordinance pursuant to S.C. Code Ann. § 4-9-120, or is this action of a non-legislative nature such that County Council may act by resolution?

3. Should County Council's action to approve the School District's annual budget, whether done by ordinance or resolution, be considered an action to "levy taxes" pursuant to S.C. Code Ann. § 4-9-130(5), for which County Council must conduct a properly-noticed public hearing (separate and distinct from any budget-related public hearing under S.C. Code Ann. § 6-1-80)?

4. If the County Council and the School Board are unable to agree on the School District's annual budget or the millage levy necessary to fund this annual budget, does the County Council have independent authority regarding either of these matters, subject to any State law requiring operations of the School District to be funded in specified amounts or levels?

Law/Analysis

As an initial matter, it should be noted that this Office is issuing an expedited opinion, and it should be read in the context of this Office's prior opinions and other applicable law. This opinion will address your first three questions together. This Office's September 19, 2012, opinion to Dennis Ray, Lugoff Fire District Chief, analyzed a similar situation concerning a special purpose district's ability to incur new debt and whether it must seek its county council's approval for new debt service millage. Op. S.C. Att'y Gen., 2012 WL 4711426 (September 19, 2012). The opinion reconciled the requirements of sections 6-1-80 and 4-9-130 as follows:

Section 4-9-130 of the South Carolina Code (1986), which concerns county government, provides in relevant part:

> Public hearings, after reasonable public notice, must be held before final council action is taken to:
>
> (1) adopt annual operational and capital budgets....

South Carolina Code section 6-1-80 (2004) provides notice requirements "in lieu of the requirements of Section 4-9-130," including in relevant part the following:

> A county, municipality, special purpose or public service district, and a school district shall provide notice to the public by advertising the public hearing before the adoption of its budget for the next fiscal year in at least one South Carolina newspaper of general circulation in the area.

Section 6-1-80 implies that a public hearing is required before a special purpose district adopts its budget. As to counties, if read narrowly, section 6-1-80 would supplant only the notice provisions of section 4-9-130, not supersede section 4-9-130 in its entirety. While the plain language of section 6-1-80 is limited to an entity's adoption of "its" budget, section 4-9-130 contains no such limitation. Rather, section 4-9-130 appears to be triggered by any action by county council to adopt a budget. As section 6-11-260 provides that the county must "adopt[]" the district's budget, a court giving effect to both 6-1-80 and 4-9-130 likely would find that each body must hold a public hearing prior to its adoption of the district budget.

Id. at 5. Section 6-1-80 is equally applicable to the adoption of a school district's budget. After county council receives a proposed budget from the school district, section 4-9-130(1) requires council to hold a public hearing, and, if it approves the budget, to adopt it by ordinance pursuant to sections 4-9-120 and 4-9-140.

It is this Office's opinion that if county council and the school district board of trustees are unable to agree on the district's proposed budget or the millage levy, county council can decline to approve the budget. In a prior opinion, this Office was asked to address a county's approval authority over a fire district's budget and taxing power. Op. S.C. Att'y Gen., 2012 WL 889085, (March 2, 2012). Therein, we found that relevant statutes "demonstrate[d] … the General Assembly ha[d] seen fit to limit the fiscal autonomy of districts," and the imposition of budgetary oversight of special purpose districts was "not uncommon in our State." Id. at 2. We opined that a county would be restrained from interfering with matters "committed explicitly to the discretion of the district's board…"

> [I]t is our opinion that a court would be unlikely to restrict the discretion of the county absent a clear reason for doing so.
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> We have discovered nothing in the history or context of the relevant Act that would suggest the county's ability to accept or reject the budget is limited to particular reasons…
>
> This is not to say that the county may interfere with matters committed explicitly to the discretion of the district's board of commissioners. …
> …
>
> Therefore, if—for example—the governing body of a fire district exercises its authority to contract with existing companies for the provision of water or adopts a schedule of charges according to its independent authority to do so, a court would be unlikely to find that the county could later modify or eliminate these items from the annual budget. Nevertheless, a court would be likely to uphold a county's decision to accept or reject the budget as a whole and return it to the governing body of the district for further consideration. *Cf.* Gould, 256 S.C. 175, 181 S.E.2d 662. In this way, the county may act as a check upon the fiscal authority of the board of commissioners without usurping the board's discretion as to any particular funding issue.

Id. at 3-4 (emphasis in original). This opinion will examine the 2021 and 2025 Acts to determine what parameters are placed on county council's approval authority and what matters are committed to the Board.

To interpret these acts, this opinion will rely on the rules of statutory construction. When interpreting a statute, the primary goal is to determine the General Assembly's intent. See Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Finally, our state courts have consistently held that repeal by implication is disfavored.

> It is presumed that the Legislature was familiar with prior legislation, and that if it intended to repeal existing laws it would have expressly done so; hence, if by any fair or liberal construction two acts may be made to harmonize, no court is justified in deciding that the last repealed the first.

State v. Hood, 181 S.C. 488, 188 S.E. 134, 136 (1936).[1] With these principles in mind, this opinion will review relevant portions of the 2021 Act and the amendments thereto in the 2025 Act.

Act No. 106 of 2021 consolidated Clarendon County School District No. 2 and 4 and created the Clarendon County School District. 2021 Act No. 106, § 1. Therein, the District's Board of Trustees (the "Board") was assigned several powers, duties, and responsibilities including to "(1) employ a superintendent as the chief executive officer; … (3) adopt the annual school district budget." 2021 Act No. 106, § 3(B). Additionally, the district superintendent was directed to "(1) appoint and, when necessary for the good of the district, remove appointed officers or employees of the district and fix the salaries of these officers and employees, … (2) prepare the budget annually, submit it to the board, and be responsible for its administration after adoption; …" 2021 Act No. 106, § 4. Finally, beginning in 2024, section 5 granted the District "total fiscal autonomy."

> (B) Beginning in 2024, the Clarendon County School District shall be vested with total fiscal autonomy. In order to obtain funds for school purposes, the board of trustees is authorized to impose an annual tax levy, exclusive of any millage imposed for bond debt service. Upon certification by the board of trustees 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. 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 Education Finance Act inflation factor and sufficient to meet the requirements of Section 59-21-1030. An increase above the 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 district school board and conducted by the county election commission. If the school district calls for the referendum provided for in this subsection to be held at any time other than at the general election conducted pursuant to Section 7-13-10, then the school district shall pay the cost of the referendum. To the extent that 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.

2021 Act No. 106, § 5.

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[1] See also Capco of Summerville, Inc. v. J.H. Gayle Const. Co., 368 S.C. 137, 141–42, 628 S.E.2d 38, 41 (2006) (citations omitted) ("Repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconcilement. Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them."); Hodges v. Rainey, 341 S.C. 79, 88–89, 533 S.E.2d 578, 583 (2000); Atlas Food Sys. & Servs., Inc. v. Crane Nat. Vendors Div. of Unidynamics Corp., 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995).

As described in your letter, H-3792 (the "2025 Act") amended 2021 Act No. 106. The 2025 Act did not expressly repeal any section of the 2021 Act. Rather, it amended specific identified sections. In relevant part, the 2025 Act amended the Boards' duties to read "(3) adopt the annual school district budget subject to approval by the Clarendon County Council." Id. at § 2 (emphasis added). The 2025 Act also amended section 5 of the 2021 Act concerning the annual budget by adding:

> Section 5 of Act 105 of 2021 is amended is read:
>
> Beginning with Fiscal Year 2025-2026, the Clarendon County School District Board of Trustees shall annually, on or before the thirty-first of May, submit to the Clarendon County Council its proposed budget for the ensuing school year, which shall be subject to approval by the county council. Each proposed budget shall be in line-item form so as to reflect the purpose of all expenditures from any source of funds which will be required within each office or department of the district. The budget must specifically include, without limitation, an itemized list of salaries paid to all administrators and heads of departments or offices within the school district. Each line item in the budget must be reconciled at the end of the fiscal year, and a detailed accounting of budgetary funds used on each item, as well any resulting surpluses or deficits, must be included in the district superintendent's annual report on the finances and administrative activities of the board.

Id. at § 3 (emphasis added).

To the extent that a provision in the 2021 can be reconciled with the 2025 Act, a court would hold that it remains in effect. See State v. Hood, supra. It seems clear that the plain language in 2021 Act No. 106, § 5 vesting "total fiscal autonomy" in the District conflicts with section 3 of the 2025 Act that subjects the budget to "approval by the county council." The rest of 2021 Act No. 106, § 5 addressing millage does not necessarily conflict with the 2025 Act, and, therefore, likely still applies. This includes the parameters on how millage may be increased by no more than two mills without voter approval, but a referendum would be required when the millage increase sought would exceed this threshold

As noted above, the 2021 Act grants the Board authority to hire a superintendent, and the superintendent has power to hire, fire, and fix salaries of officers and employees. Because the sections granting authority over these subjects were not expressly altered by the 2025 Act, a court would likely find they remain within the Board's and Superintendent's discretion, rather than subject to county council's approval authority.

As in the prior opinion, the 2025 Act does not suggest the county's ability to accept or reject the proposed budget is limited to particular reasons. However, at 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).[2]

Conclusion

Based on the discussion above, it is this Office's opinion that S.C. Code § 6-1-80 implies that a public hearing is required before the Clarendon County School District adopts its proposed budget. After Clarendon County Council receives a proposed budget from the school district, section 4-9-130(1) requires council to hold a public hearing, and, if it approves the budget, to adopt it by ordinance pursuant to sections 4-9-120 and 4-9-140.

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[2] The Court's order, while brief, suggests impasses developed with both parties as they sought writs directing their bodies to take action.

> Appellants-Respondents (School Board) seek supersedeas of a writ of mandamus compelling it to submit a budget to Respondents-Appellants (County Council). County Council seeks supersedeas of a writ of mandamus compelling it to impose a tax levy in an amount sufficient to meet the minimum requirements of the Education Finance Act of 1977.

Id. (emphasis added). The Court issued the following writ: "County Council is ordered to consider all submitted budgets for one week, at which time it shall either adopt or reject them. In any case, the Council shall approve and adopt a budget by Friday, February 21, 1986. Act 230 of 1985." Id. The Court warned that "[fa]ilure to comply" with the order was "punishable as contempt of this Court," and admonished both parties to remember that "the paramount concern here is the welfare of the children of Dorchester County School District." Id.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General