June 13, 2007

Charles J. Boykin, Esquire
Boykin, Davis & Hawkins, LLC
Post Office Box 11844
Columbia, South Carolina 29211

Dear Mr. Boykin:

From your letter, we understand you wish to obtain an Attorney General's opinion on behalf of the Board of Trustees for the School District of Fairfield County (the "Board") on the following matters:

> (1) Is the "local maintenance of effort" requirement of Section 59-21-1030 still in effect following the passage of Act 388 of 2006?
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> (2) If the local maintenance of effort requirement is still in effect, what is the basis for determining the dollar amount necessary to meet the local maintenance of effort requirement in light of Act 388 of 2006's exemption of residential real property from real property taxes assessed for school operating purposes?
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> (3) If the local maintenance of effort requirement is still in effect, may the Board of Trustees for the School District of Fairfield County exceed the local millage cap established by Act 431 of 2002 without the approval of the county council in order to satisfy the local maintenance of effort requirement?
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> (4) If the local maintenance of effort requirement is still in effect, may the District exceed the general millage cap established by Section 6-1-320(A) in order to meet the local maintenance of effort requirement?

Law/Analysis

The Legislature enacted the Education Improvement Act of 1984 (the "EIA") to provide maintenance and support to public schools through the levy of an additional one percent sales and use tax to finance cost of capital improvements for local school districts. 1984 S.C. Acts 2176. The Legislature since amended some of the provisions of the EIA to allow for the collection of accommodations and excise taxes, in addition to sales and use taxes, to fund the efforts of the EIA. 1990 S.C. Acts 2613. Section 59-21-1030 of the South Carolina Code (2004), which is part of the EIA, places responsibility on local school districts to provide a minimum level of per pupil financial support as a condition of receiving EIA funds. This section states:

> Except as provided in this section, school district boards of trustees or any other appropriate governing body of a school district shall maintain at least the level of per pupil financial effort established as provided in fiscal year 1983-84. Beginning in 1985-86, local financial effort for noncapital programs must be adjusted for an inflation factor estimated by the Division of Research and Statistical Services.
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> Thereafter, school district boards of trustees or other governing bodies of school districts shall maintain at least the level of financial effort per pupil for noncapital programs as in the prior year adjusted for an inflation factor estimated by the Division of Research and Statistical Services. The county auditor shall establish a millage rate so that the level of financial effort per pupil for noncapital programs adjusted for an inflation factor estimated by the Division of Research and Statistical Services is maintained as a minimum effort. No school district which has not complied with this section may receive funds from the South Carolina Education Improvement Act of 1984 Fund. School district boards of trustees may apply for a waiver to the State Board of Education from the requirements of this section if:
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> > (1) the district has experienced a loss in revenue because of reduction in assessed valuation of property or has had a significant increase in one hundred thirty-five average daily membership;
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> > (2) the district has experienced insignificant growth in revenue collections from the previous year;

> (3) the district has demonstrated for one year that it has achieved operating efficiencies and all education requirements are being met;
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> (4) a midyear revenue shortfall results in a reduction of funds appropriated in accordance with Chapter 20 of Title 59 (The Education Finance Act). A decline in the measured academic achievement of the students must immediately cause the State Board of Education to void all waivers provided under this section and make the district ineligible to apply for any waivers under this section for two consecutive years. If the decline in student achievement occurs, the district shall revert to the minimum effort requirement, adjusted for the prior years inflation factor. Waiver (4) does not apply to funds needed to meet the Minimum Salary Schedule for teachers in South Carolina. A school district is eligible for an annual renewal of the waiver provided the district meets one of the above criteria and meets the minimum effort requirement of the previous year and at least the minimum required effort of the Education Finance Act.

S.C. Code Ann. § 59-21-1030.

In 2006, the Legislature passed the Property Tax Reform Act (the "Act"). 2006 S.C. Acts 3133. As part of this Act, the Legislature for the most part changed the mechanism by which local school districts are funded. Under the provisions of the Act, the Legislature exempts all owner-occupied residential property from "all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt." Id. (codified as S.C. Code Ann. § 12-37-220(B)(47)(a)). To offset the revenue school districts no longer receive from the collection of property tax on owner-occupied residential property, the Legislature imposed an additional one percent sales, use, and casual excise tax. Id. (codified as S.C. Code Ann. § 12-36-1110). Using this revenue, in fiscal year 2007-2008, the State will reimburse local school districts in amounts equal to the revenue the school district would have collected had they imposed property taxes on owner-occupied residential property. S.C. Code Ann. § 11-11-156(A)(1). Beginning in fiscal year 2008-2009 and in future years, the State will continue to reimburse school districts based on the amount each school district received in fiscal year 2007-2008, but adjustments are made to this figure based on each school district's student population and inflation. S.C. Code Ann. § 11-11-156. If in any year the school districts within a county do not collectively receive a total of two million five hundred thousand dollars in reimbursements from the State, section 11-11-156(B) of

the South Carolina Code (2006) requires the State to make a distribution to such a county in order to ensure districts located in the county collectively receive this amount.

In your first question to us, you ask in light of the passage of the Act, whether the "local maintenance of effort" requirement in section 59-21-1030 is still in effect. Thus, we presume you are asking whether the enactment of the Act effectively repealed the local maintenance of effort requirement. Finding, no provision contained in the Act specifically repealing section 59-21-1030, we must determine whether the Legislature implicitly repealed this provision with its enactment of the Act. Our Supreme Court on numerous occasions has taken the position that South Carolina law does not favor the repeal of statutes by implication. See, e.g., Hodges v. Rainey, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000). Further, the Supreme Court states that "[s]tatutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." Id. This position is based upon the Court's presumption "that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects." State v. McKnight, 352 S.C. 635, 648, 576 S.E.2d 168, 175 (2003).

With these principles of interpretation in mind, we consider whether the Act repealed the local maintenance of effort required by section 59-21-1030. Certainly, portions of section 59-21-1030 contain language that may become confusing in light of the Act. Of particular concern is the portion of section 59-21-1030 stating: "The county auditor shall establish a millage rate so that the level of financial effort per pupil for noncapital programs adjusted for an inflation factor estimated by the Division of Research and Statistical Services is maintained as a minimum effort." With the enactment of the Act, school districts are prohibited from levying a significant portion of that millage because of the exemption on owner-occupied residential property. However, school districts are also less reliant on the levy of property tax millage. Under the Act, school districts gain a new source of revenue from the imposition of a sales tax and are allocated this revenue based upon what they would have received had they levied a property taxes on owner-occupied residential property. Furthermore, while the owner-occupied residential property exemption considerably decreases school districts' revenue from property taxes, school districts are not completely prohibited from levying property taxes. Thus, the Act does not make it impossible to comply with section 59-21-1030. Because the Act and section 59-21-1030 may be read to reconcile with one another, we believe both are operative and the Act did not implicitly repeal section 59-21-1030.

Furthermore, we believe the provisions contained in the Act provide clear evidence of the Legislature's intent for the provisions of the EIA and section 59-21-1030 in particular to remain operative after the passage of the Act. We note a provision of the Act specifically referencing section 59-21-1030. Section 4-10-810 of the South Carolina Code (Supp. 2006), contained in the portion of the Act allowing local governing bodies to impose an optional sales and use tax, provides:

> Where applicable, the actual revenues of the sales and use tax collected pursuant to this article that are used to provide a credit against the property tax liability for school operations must be considered, pursuant to the requirements of Section 59-21-1030, one of the local revenues used in computation of the required Education Improvement Act maintenance of local effort.

Accordingly, the fact that the Legislature specifically notes the impact of the local option sales and use taxes on section 59-21-1030 provides further evidence that the Legislature did not intend to repeal this provision with its enactment of the Act. Moreover, it explains how revenues generated from the imposition of a local option sales and use tax, as provided from under these provision, will impact a school district's calculation of its local maintenance of effort requirement.

In addition, other provisions of the Act contain references to the EIA and thus, suggest the Legislature did not intend to repeal its provisions. For instance, section 11-11-156(A)(8) of the South Carolina Code (Supp. 2006), contained in the provisions of the Act dealing with reimbursements received by school districts states: "Reimbursements to a school district under this subsection shall be considered in the computation of the required Education Improvement Act maintenance of local effort." Section 11-11-156(B) of the South Carolina Code (Supp. 2006), requiring the school districts in each county collectively receive at least two million five hundred thousand dollars in reimbursements from the State provides: "The distributions to a county and then to a school district under this subsection shall be considered to be outside of the Education Finance Act and shall not be considered when computing the maintenance of local effort required of that district under the Education Improvement Act." Accordingly, through the enactment of these provisions, the Legislature specifically contemplates the interplay between the EIA and Act. Furthermore, these provisions specify the impact of reimbursements received by the local school districts on the local maintenance of effort requirement imposed by section 59-21-1030 of the EIA. Thus, we opine the Legislature did not intend to repeal section 59-21-1030 in its enactment of the Act.

Given that we find the local maintenance of effort requirement contained in section 59-21-1030 remains in effect, you ask "what is the basis for determining the dollar amount necessary to meet the local maintenance of effort requirement . . . ." According to section 59-21-1030, the amount of financial effort per pupil required is "the level of financial effort per pupil for noncapital programs as in the prior year adjusted for an inflation factor estimated by the Division of Research and Statistical Services." Thus, this provision remains unchanged by the enactment of the Act. However, the Act modifies the way in which school districts fund this requirement. While certainly, school districts will continue to receive funding from property other than owner-occupied residential property, they will also receive funding through State reimbursements, which section 11-11-156(A)(8) specifically notes "shall be considered in the computation of the required Education

Improvement Act maintenance of local effort." Furthermore, as we noted above, if a local governing body elects to impose an optional sales and use tax, section 4-10-810 requires the consideration of amounts generated by these taxes in funding the local maintenance of effort requirement.

Next, you inquire as to whether the Board may exceed the general millage rate cap provided in section 6-1-320(A) of the South Carolina Code (Supp. 2006) or its local millage cap imposed by the Legislature through Act 431 of 2002. The Legislature amended section 6-1-320 with its enactment of the Act. As amended, this section provides:

> (A) Notwithstanding Section 12-37-251(E), a local governing body may 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 indexes 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 Office of Research and Statistics of the State Budget and Control Board. However, in the year in which a reassessment program is implemented, the rollback millage, as calculated pursuant to Section 12-37-251(E), must be used in lieu of the previous year's millage rate.
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> (B) 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:
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> > (1) the deficiency of the preceding year;
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> > (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;
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> > (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.
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> 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.
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> (C) The millage increase permitted by subsection (B) is in addition to the increases from the previous year permitted pursuant to subsection (A) and shall be an additional millage levy above that permitted by subsection (A). The millage limitation provisions of this section do not apply to revenues, fees, or grants not derived from ad valorem property tax millage or to the receipt or expenditures of state funds.
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> (D) 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.
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> (E) Notwithstanding any provision contained herein, this article does not and may not be construed to amend or to repeal the rights of a legislative delegation to set or restrict school district millage, and this article does not and may not be construed to amend or to repeal any caps on school millage provided by current law or statute or limitation on the fiscal autonomy of a school district as currently in existing law.

S.C. Code Ann. § 6-1-320(A).

As part of the Act, the Legislature rewrote subsection (B) containing the reasons for which a local governing body, which by definition includes local school districts, may exceed the general millage rate limitation contained in subsection (A). 2006 S.C. Acts 3133. Most significantly, the Legislature removed the provision allowing the millage rate limitation to be suspended "to meet . . . the per pupil maintenance of effort requirement of section 59-21-1030, if applicable." S.C. Code Ann. § 6-1-320 (2004). By removing this provision, the Legislature clearly indicates its intention to prevent school districts from exceeding the millage rate limitations set forth in subsection (A) based on a need to satisfy the local maintenance of effort requirement imposed by section 59-21-1030. Moreover, we find none of the five exceptions currently in place allow a school district to exceed the millage rate limitation in order to raise additional funds to satisfy this requirement. Therefore, we do not believe a school district's need to satisfy the local maintenance of effort requirement under section 59-21-1030 provides an exception to the millage rate limitation contained in section 6-1-320.

In addition, you inquire as to whether the Act allows the Board to exceed the local millage cap imposed by the Legislature through Act 232 of 2002 without the approval of the Fairfield County Council. Act 431 of 2002 pertains specifically to the Fairfield County School District and the Board's ability to set school millage. 2002 S.C. Acts 4078. This act provides :

> The board shall prepare an annual budget for general school purposes. The board is authorized and empowered, by resolution duly adopted, to determine and fix the amount of the levy needed to operate schools in the district and shall notify the county auditor on or before June fifteenth of each year of the amount of the levy and file with him a certified copy of the resolution. In the event the annual budget requires an increase in millage in excess of three mills above that levied for the previous year or increases in excess of the consumer price index for the previous year, whichever is less, the budget must be submitted for approval to the Fairfield County Council.

Id.

As cited above, section 6-1-320(E) states that other provisions of section 6-1-320 may not be construed to amend or repeal other laws or statutes limiting the fiscal authority of local school districts. S.C. Code Ann. § 6-1-320(E). In its amendments to section 6-1-320 under the Act, the Legislature did not amend this provision. Thus, we are of the opinion that the Act does not impact local millage rate caps, such as the one imposed on the Fairfield County School District in act 232. Therefore, the local millage rate cap remains enforceable despite the passage of the Act.

Conclusion

We find no provision in the Act specifically repealing section 59-21-1030 of the South Carolina Code. In addition, from our reading of the Act, which makes reference to section 59-21-1030 and the minimum local effort requirement, we do not believe the Legislature intended to repeal this provision with its enactment of the Act. Further, we do not believe the provisions of the Act are irreconcilable with section 59-10-1030. Thus, given our courts' strong disfavor of the repeal of statutes by implication, it is our opinion that the Act did not repeal section 59-21-1030. As for the basis for determining the dollar amount necessary to meet the local maintenance effort requirement, we believe this amount continues to be the level of financial effort as determined in the prior year adjusted for inflation. However, we note those provisions of the Act requiring school districts to consider the reimbursement received from the State under the Act in calculating the local maintenance of effort requirement. Finally, with regard to the impact of the Act on the millage rate limitations imposed generally on school districts pursuant to section 6-1-320 and specifically on the School District of Fairfield County in accordance with act 431 of 2002, we believe these millage rate caps remain in effect despite the passage of the Act.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook
Assistant Deputy Attorney General