HENRY MCMASTER
ATTORNEY GENERAL

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The Honorable Paul Brawley
Richland County Auditor
Post Office Box 192
Columbia, South Carolina 29202

Larry C. Smith, Esquire
Richland County Attorney
Post Office Box 192
Columbia, South Carolina 29202

Melinda Anderson, Chair
Richland School District Two Board of Trustees
6831 Brookfield Road
Columbia, South Carolina 29206

Dear Mr. Brawley, Mr. Smith, and Ms. Anderson:

We understand each of you separately requested an opinion of this Office concerning the millage levied in Richland County for the benefit of Richland School District Two ("District Two"). Mr. Smith and Ms. Anderson both ask who has the authority to calculate the millage cap for District Two as set forth in section 6-1-320 of the South Carolina Code. While, Mr. Brawley asked us whether Richland County Council ("County Council") has "the legal authority to set a millage rate that exceeds the millage cap . . . ."

Law/Analysis

According to Mr. Smith's letter, County Council has the authority to levy taxes for the support of District Two pursuant to section 4-9-70 of the South Carolina Code (1986). Section 4-9-70 provides:

> The provisions of this chapter shall not be construed to devolve any additional powers upon county councils with regard to public school education, and all school districts, boards of trustees and county boards of education shall continue to perform their statutory functions in matters related thereto as prescribed in the general law of the State;

> provided, however, that except as otherwise provided for in this section the county council shall determine by ordinance the method of establishing the school tax millage except in those cases where boards of trustees of the districts or the county board of education established such millage at the time one of the alternate forms of government provided for in this chapter becomes effective . . . .

Section 6-1-320 of the South Carolina Code (Supp. 2008) places a limitation on the millage rate local governing bodies may impose on an annual basis and states:

> (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 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 Office of Research and Statistics of the State Budget and Control Board. If the average of the twelve monthly consumer price indices experiences a negative percentage, the average is deemed to be zero. If an entity experiences a reduction in population, the percentage change in population is deemed to be zero. 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;
>
> (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, 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 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.

(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.

(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.

(E) Notwithstanding any provision contained in this article, 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 that are more restrictive than the limit provided pursuant to subsection (A) of this section.

Section 6-1-300(3) of the South Carolina Code (2004) defines "local governing body" for purposes of all the provisions contained in article 3 of chapter 1 of title 6, which contains section 6-1-320, as follows: "the governing body of a county, municipality, or special purpose district. As used in Section 6-1-320 only, local governing body also refers to the body authorized by law to levy school taxes." Thus, with regard to District Two, because County Council maintains the authority to levy taxes for District Two, it is the governing body to which section 6-1-320 refers. Thus, unquestionably, County Council levies the tax for District Two and is bound by section 6-1-320 with regard to the amount of tax levied.

However, Mr. Smith and Ms. Anderson appear not to be asking about who has the authority to levy the tax, but who is responsible for performing the calculation required in section 6-1-320 to determine the upper limit of the tax rate that may be imposed. Section 6-1-320 does not specifically address this question. In addition, we were unable to locate any State court decisions or prior opinions of this Office addressing this specific question.

Thus, we first turn to the rules of statutory interpretation in order to determine who is responsible for making this calculation. As our Supreme Court expressed in Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996):

> The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature. Gilstrap v. South Carolina Budget and Control Board, 310 S.C. 210, 423 S.E.2d 101 (1992). In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole. Creech v. South Carolina Public Service Authority, 200 S.C. 127, 20 S.E.2d 645 (1942). Unless there is something in the statute requiring a different interpretation, the words used in a statute must be given their ordinary meaning. Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231 (1975).

Initially, we note that section 6-1-320 makes no mention of county auditors with regard to the calculation of the millage rate cap. This section only refers to the local governing body, which in this case is County Council. Therefore, the language of the statute itself appears to indicate that the responsibility for insuring that the millage rate does not exceed that as provided for in this

provision is placed solely on County Council. Thus, from section 6-1-320, we believe a court would find that County Council is also responsible for the calculation of the millage rate cap.

Moreover, we believe this interpretation comports with the general authority provided to county auditors by the Legislature. Section 12-39-180 of the South Carolina Code (Supp. 2008), discussing a county auditor's role with regard to the levy of property tax provides, provides in pertinent part:

> A county auditor, after receiving statements of the rates and sums to be levied for the current year from the department and from other officers and authorities legally empowered to determine the rate or amount of taxes to be levied for the various purposes authorized by law, shall immediately proceed to determine the sums to be levied upon each tract and lot of real property and upon the amount of personal property, monies, and credits listed in his county in the name of each person . . . .

In accordance with this provision, the county auditor's authority is limited to the calculation of taxes on individual tracts of real property. The auditor is not given any authority with regard to the overall tax rate, which is to be determined by the body with the authority to levy the tax. As explained by our Supreme Court in Lee County v. Stevens, 277 S.C. 421, 424, 289 S.E.2d 155,156 (1982): "Section 12-39-180, Code of Laws of South Carolina (1976), requires the county auditor to calculate individual property taxes after receiving the rates and sums to be levied for the coming year." Furthermore, as we stated in a 1998 opinion of this Office: "The Auditor's role is limited to levying the millage upon all taxable property in the county. The Auditor does not possess any discretion in doing so, but act in a ministerial capacity only." Op. S.C. Atty. Gen., December 4, 1998 (citing Stevens, 277 S.C. at 421, 289 S.E.2d at 155).

With regard to District Two, County Council is solely responsible for the tax levy for District Two. Given the authority cited above, the Auditor's role is limited to calculating individual property taxes to be levied on behalf of District Two. Although section 6-1-320 does not specifically state who should perform the millage rate cap calculation required pursuant to this provision, we believe that the Legislature intended for this to be performed by the party with the authority to levy the tax, which is County Council. Therefore, to answer Mr. Smith and Ms. Anderson's question, we are of the opinion that County Council is responsible for calculating and ensuring that the taxes levied on behalf of District Two are within the limitations imposed by section 6-1-320.

Mr. Brawley, in his letter, asked a related but different question of whether County Council has the authority to set a rate that exceeds the limitations provided in section 6-1-320. To answer this question, we refer to section 6-1-320. As cited above, subsection (B) of section 6-1-320

provides a list of seven circumstances in which a local governing body, may exceed the millage rate limitation established in subsection (A) of this provision. To our knowledge, the Legislature has not provided for any additional exceptions outside of the seven listed. Thus, County Council is prohibited from increasing the millage rate imposed for District Two above that provided for in section 6-1-320(A), unless one of the exceptions under section 6-1-320(B) apply.

Conclusion

Based on our reading of section 6-1-320(A) and our understanding of County Council's and the Auditor's roles with regard to the imposition of property taxes, it is our opinion that the Legislature intended for County Council to determine the millage rate cap applicable to District Two pursuant to this provision. However, we also note that while County Council has the sole authority to set the millage rate for District Two, it may not exceed the millage rate cap as calculated in accordance with section 6-1-320(A) unless one of the enumerated exceptions listed under section 6-1-320(B) apply.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General