HENRY MCMASTER
ATTORNEY GENERAL

October 26, 2010

The Honorable Lee Bright
Member, South Carolina Senate
Post Office Box 1079
Roebuck, South Carolina 29376

Dear Senator Bright:

We received your letter requesting an opinion as to the legality to the millage rates imposed by the Holly Springs Fire District Commission (the "Commission") in 2009. From your letter and the accompanying information you provided, we understand that in 2008, the Commission approved a millage rate of 18 mils. This amount exceeded the allowable millage pursuant to section 6-1-320(A) of the South Carolina Code, but the increase was allowed under section 6-1-320(B) because of a deficit in 2007. For tax year 2009, the Commission certified to the county auditor that the millage rate should remain at 18 mils. You question whether or not keeping the millage at the 2008 rate is permissible under section 6-1-320.

Law/Analysis

The Legislature established Holly Springs Fire District (the "District"), formally called the Piedmont Rural Fire District, by act 1958 of 1972. 1972 S.C. acts 3944. According to its enabling legislation, "[t]he Auditor and Treasurer of Spartanburg County are hereby directed to levy and collect a tax of not more than 5 mills to be determined by the board of fire control . . . ." From the information you provided, we understand the millage was increased to 16.7 mils by referendum.

Section 6-1-320(A) of the South Carolina Code (Supp. 2009) generally places a limitation on how much a local governing body may increase its millage rate in a given year to that amount necessary to account for inflation and changes in population. Section 6-1-300(3) of the South Carolina Code (2004) defines local governing body for purposes of section 6-1-320 as including "the governing body of a county, municipality, or special purpose district." Thus, clearly the District is

subject to the millage cap established pursuant to section 6-1-320. However, section 6-1-320(B) provides:

> 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:
>
> (1) the deficiency of the preceding year . . . .

From the information included with your letter, we understand the District experienced a deficit in 2007. As a result, the Commission employed the exception under section 6-1-320(B)(1) to increase its millage to 18, which was above the limit established under section 6-1-320(A) in 2008. We understand you are not concerned with the validity of the Commission's actions with regard to the millage set for 2008, but are concerned because the Commission instructed the Spartanburg County Auditor to maintain the District's millage at 18 mils for 2009. Your letter indicates that you believe that section 6-1-320 requires the Commission to take additional action in order to maintain the millage above the cap.

In order to address your concerns, we must interpret section 6-1-320 and in particular the exception found in subsection (B)(1). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 147, 694 S.E.2d 525, 529 (2010).

> Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. The best evidence of intent is in the statute itself: What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.

Id. at 148, 694 S.E.2d at 530 (citations and quotations omitted). "In construing statutory language, the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect." South Carolina State Ports Auth. v. Jasper, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). "It is also a well established rule of construction that a tax statute is not to be extended beyond the clear import of its language, and that any substantial doubt as to its meaning should be resolved against the government and in favor of the taxpayer." Scott v. South Carolina Tax Comm'n, 262 S.C. 144, 148-49, 202 S.E.2d 854, 856 (1974).

Section 6-1-320(B) provides a very narrow listing of exceptions to the general rule prohibiting local governing bodies from increasing their millage rates. By providing such a narrow list, we presume the Legislature intended to prohibit governing bodies from increasing property taxes except for in limited circumstances. With that intent in mind, we look to the language used by the Legislature. In subsection (B), the Legislature provided that the limitation in subsection (A) may be "suspended" due to an enumerated list of circumstances, including a prior year deficiency. The term "suspend" is defined as "[t]o cause to stop for a period; interrupt[,] . . . [t]o hold in abeyance, defer[,] . . . [t]o render temporarily ineffective . . . ." The American Heritage College Dictionary 1368 (3rd ed. 1993). The Legislature's use of this term indicates the millage rate allowable under subsection (A) is only temporarily replaced by that rate necessary to remedy the reason for the exception.

Furthermore, subsection (B) also includes the following language:

> 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.

S.C. Code Ann. § 6-1-320(B). This provision labels the portion of the millage that exceeds the cap established in subsection (A) as a surcharge and requires local governing bodies to list this amount separate from the general millage rate imposed. Furthermore, this provision allows the surcharge to continue "only for the years necessary to pay the deficiency . . . ." Thus, the plain language used in section 6-1-320(B) indicates the Legislature's intent that any additional millage imposed above the general amount must be kept separate and is only to be imposed on a temporary basis.

Reading section 6-1-320(B) as a whole and keeping in mind that if any doubt exist with regard to this provision that it should be resolved in favor of the taxpayer, we believe the Legislature intended to limit a local governing body's ability to exceed the millage rate cap under section 6-1-320(A) to the year in which the exception applies. Therefore, if the Commission wishes to exceed the millage rate allowed pursuant to section 6-1-320(A), it must establish the applicability of one of the exceptions in subsection (B) for that particular year. Moreover, in the case of deficiency, the Legislature makes clear that the excess millage levied to cure the deficiency is further limited in that it may only be imposed until the deficiency is cured. Therefore, to answer your question, we are of the opinion that although the Commission successfully employed one of the exceptions listed in section 6-1-320(B) allowing the District to exceed the millage rate cap in 2008, if it wishes to exceed

the general millage rate in 2009, it must reestablish that one of the exceptions under section 6-1-320(B) is applicable. Additionally, in accordance with section 6-1-320(B), the Commission must also approve the increase by a two-thirds vote.

Very truly yours,

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REVIEWED AND APPROVED BY:

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