HENRY MCMASTER
ATTORNEY GENERAL

August 4, 2009

The Honorable Kevin L. Bryant
Member, South Carolina Senate
104-A North Avenue
Anderson, South Carolina 29625

Dear Senator Bryant:

We received your letter requesting an opinion of this Office interpreting Act 388 as it pertains to two issues affecting the Anderson Districts 1 & 2 Career and Technology Center (the "Center"). Specifically, you ask the following two questions:

> 1. How do multi-district career centers have a mil cap determined? School districts use CPI and the growth rate of their districts for determining mil cap. Since multi-district centers cross district lines, how does this rule apply to Anderson 1 & 2 Career and Technology Center? Anderson District 1 has a higher cap and the majority of the Center's students are from District 1, however, using their rate may not be legal because they would be charging District 2 a higher rate than the allowed District 2 cap.
>
> 2. Does the Home Rule Act preclude the Anderson Delegation from approving any mil increase for the Anderson 1 & 2 Career & Technology Center?

Law/Analysis

Section 6-1-320 of the South Carolina Code (Supp. 2008) places a limitation on how much a local governing body may increase its millage rate imposed for general operating purposes. Specifically, section 6-1-320(A) states that a local governing body may increase its millage rate "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." However, section 6-1-320(B) describes specific circumstances under which the limitation on millage rate increases as described in subsection (A) may be suspended. In 2006, the Legislature passed Act 388, referred to as the Property Tax Reform Act, which made significant amendments to section 6-1-320 including many changes to the circumstances allowing for a suspension of the limitation. 2006 S.C. Acts 3133.

By your letter, we understand that you are interested in how the millage rate limitation established pursuant to section 6-1-320 impacts the Center. In order to make this determination, we must first understand whether or not this provision applies to the Center. As noted above, section 6-1-320 places a millage rate limitation on local governing bodies. Section 6-1-300(3) defines the term "local governing body" for purposes of section 6-1-320 and the other statutes contained in article 3 of chapter 1 of title 6. This provision states: "'Local governing body' means 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." S.C. Code Ann. § 6-1-300(3).

In a recent opinion, this Office addressed the application of the millage rate limitation found in section 6-1-320 to the R.D. Anderson Applied Technology Center ("R.D. Anderson"). Op. S.C. Atty. Gen., May 23, 2008. Initially, we determined that R.D. Anderson was created by several school districts located in Spartanburg County pursuant to chapter 53 of title 59 of the South Carolina Code. Id. However, we concluded based on section 59-53-1910, R.D. Anderson itself is not a school district. In regard to the applicability of section 6-1-320, we analyzed whether R.D. Anderson is a local governing body under the definition provided in section 6-1-300(3). We determined "the Board does not fall within the statutory definition of a local governing body as it is not the governing body of a county, municipality, special purpose district, or a body authorized to levy school taxes." Id. In addition, based on our review of chapter 53 of title 59, career and technology centers created pursuant to these provisions are not given the authority to levy taxes. Thus, we concluded that the millage rate cap in 6-1-320 could not apply to the Board because it has no authority to levy a tax. Id.

According to a representative of the Center, the Legislature established the Center and its Board of Trustees in 1972 via act 1701. 1972 S.C. Acts 3322. Section 2 of the enabling legislation states:

> **Separate vocational districts established.** - There shall be established a separate vocational district consisting of School Districts Numbers One and Two of Anderson County, which

> vocational district shall be known as "Vocational Education District of Anderson County School Districts One and Two," (the district) the boundaries of School Districts Numbers One and Two to comprise the district; and the vocational district shall prepare and recommend an operating budget each year on or before June first to the Anderson County Legislative Delegation for its approval and upon approval such delegation shall provide such funds as may be necessary to operate the vocational center.

Id.

Clearly, the Center is not a governing body of a county or a municipality to bring it under the definition of a governing body for purposes of section 6-1-320. However, a court could view the center as a special purpose district. While section 6-1-300 does not define what constitutes a special purpose district, numerous statutes contained in the general provisions governing special purpose districts define special purpose districts as districts created by an act of the General Assembly prior to March 7, 1973 and to which the Legislature committed a local governmental function prior to March 7, 1973. S.C. Code Ann. §§ 6-11-350; 6-11-410; 6-11-810; 6-11-1610 (2004). As we previously noted, the Legislature established the Center in 1972. In addition, according to the Center's enabling legislation, its purposes is to create and manage a career and technology center to serve school children. This appears to be a local government function. Thus, a court could conclude that the Center is a special purpose district and therefore, a local governing body for purposes of section 6-1-320.

However, in our review of the Center's enabling legislation, we did not find a provision giving the Center any authority to levy taxes. As quoted above, section 2 of the Center's enabling legislation states that the Center is to prepare an operating budget and submit it to the Anderson County Delegation for approval. The enabling legislation then instructs that the Delegation "shall provide such funds as may be necessary to operate the vocational center." Thus, the Center, unlike R.D. Anderson, was established by the Legislature and could be construed to constitute a special purpose district. However, like R.D. Anderson, the Center does not have the authority to levy a tax. Therefore, even if a court were to find that the Center is a special purpose district, we do not believe the millage rate limitation provisions found in section 6-1-320 apply to the Center because of its lack of authority to levy a tax.

In addition to the application of section 6-1-320 to the Center, you also inquire as to the impact of the Home Rule Act on the Delegation's ability to approve a millage increase for the Center. We presume that you are concerned as to whether the Legislature can amend the Center's

enabling legislation to perhaps establish a millage rate given the Home Rule provisions prohibiting the passage of special legislation.

In 1975, the Legislature passed article VIII, section 7 of the South Carolina Constitution as part of the Home Rule amendments to the South Carolina Constitution. This provision provides:

> The General Assembly shall provide by general law for the structure, organization, powers, duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of governmental services provided. Alternate forms of government, not to exceed five, shall be established. No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.

S.C. Const. art. VIII, § 7 (2009).

Our courts have held this provision prevents the Legislature from amending the enabling legislation for those special purpose districts that were created prior to Home Rule. In Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) our Supreme Court considered the constitutionality of a post Home Rule amendment to legislation passed prior to Home Rule pertaining to the Spartanburg Sanitary Sewer District. The Court explained: "Article VIII, § 7 is not only applicable to special legislation creating a special purpose district, but also to special legislation dealing with special purpose districts created prior to the ratification of Article VIII or the amendment of prior special legislation." Id. at 80, 321 S.E.2d at 265 (citation omitted). Moreover, the Court concluded that "the General Assembly can modify legislation regarding special purpose districts only through the enactment of general law . . . ." Id. at 81, 321 S.E.2d at 266.

The Court came to a similar conclusion in Hamm v. Cromer, 305 S.C. 305, 408 S.E.2d 227 (1991). In that decision, the Court addressed the constitutionality of legislation changing the way members of a special purpose district's board members are appointed. Id. The Court stated:

> The prohibition of Section 7 is applicable to special legislation dealing with districts created prior to the ratification of Article VIII or the amendment of prior special legislation. Id. Because Act No. 784 amended prior special legislation which created the Authority, the prohibition of Section 7 of Article VIII applies. The enactment of Act No. 784 is exactly the type of special legislation which is prohibited by Sections 1 and 7 of Article VIII of the South Carolina

> Constitution as it was not intended that after the ratification of the constitutional amendment, the General Assembly could repeatedly inject itself into local affairs.

Id. at 308, 408 S.E.2d 228-29. Thus, again the Court struck down the amendment as unconstitutional. Id.

Based on our previous analysis, the Center could be viewed as a special purpose district. However, we do not believe article VIII, section 7 prohibits the Legislature from adopting legislation pertaining to the Center. Our Supreme Court recognized that the prohibition on special legislation contained in article VIII, section 7 of the South Carolina Constitution does not apply to legislation pertaining to education. In Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975), our Supreme Court stated:

> Creation of different provisions for school districts does not impinge upon the 'home rule' amendment because public education is not the duty of the counties, but of the General Assembly. The General Assembly has not been mandated by any constitutional amendment to enact legislation to confer upon the counties the power to control the public school system. To the contrary, the command of new Article XI, Section 3, is 'The General Assembly shall provide for the maintenance and support of a system of free public schools.'

Id. at 143, 217 S.E.2d at 37. While we will not attempt to opine as to the Center's status as a school district, we understand from speaking with representatives from the Center, in at least one instance, a circuit court indicated that the Center is a school district. Nevertheless, even if a court were to conclude that the Center is not a school district, we believe passage of legislation regarding the Center is educational in nature and enacted pursuant to article XI, section 3 and thus, would not be impacted by article VIII, section 7. Accordingly, we do not believe that the Legislature would be prohibited from passing legislation involving the Center or its funding.

In your letter, you ask about the Anderson County Delegation's authority to approve millage rate increases for the Center.[1] While we believe the Legislature has the authority to act with regard to the Center, we do not believe the Anderson County Delegation has similar authority. Our Supreme Court in Gunter v. Blanton, 259 S.C. 436, 192 S.E.2d 473 (1972) and Aiken County Board of Education v. Knotts, 274 S.C. 144, 262 S.E.2d 14 (1980) clarified that the approval of tax levies by legislative delegations is unconstitutional. In Gunter, the Supreme Court considered a local law

[1]We note that the Center's enabling legislation currently does not provide the Center with authority to levy taxes or specify a particular millage rate.

amending a prior law giving a school district the authority to levy taxes by stating that the school district could not increase taxes without the legislative delegation's approval. Gunter, 259 S.C. 436, 192 S.E.2d 473. The citing to article I, section 8 of the South Carolina Constitution, governing the separation of powers among the three branches of government, the Court stated: "The Act does not and cannot authorize the members of the delegation to participate in this determination as legislators, for they may exercise legislative power only as members of the General Assembly." Id. at 441, 192 S.E.2d at 475. Moreover, the Court in Knotts stated:

> As a general rule, the Legislature may not, consistently with the constitutional requirement here involved, undertake to both pass laws and execute them by setting its own members to the task of discharging such functions by virtue of their office as legislators. Spartanburg County v. Miller, 135 S.C. 348, 132 S.E. 673 (1924). The Legislature may properly engage in the discharge of such functions to the extent only that their performance is reasonably incidental to the full and effective exercise of its legislative powers. Id. As the functions of the Legislative Delegation in this instance are not incidental to or comprehended within the scope of legislative duties, the separation of powers doctrine as provided by Article I, section 8 has clearly been violated.

Knotts, 274 S.C. at 149-50, 262 S.E.2d at 17. Therefore, article I, section 8 of the South Carolina Constitution would prohibit the Anderson County Delegation from approving millage rate increases.

Conclusion

Section 6-1-320 of the South Carolina Code places limitations on local governing bodies' ability to increase their millage rates. A court could determine that the Center is a special purpose district and therefore, imposing the limitations contained in section 6-1-320 on the Center. However, regardless of whether the Center is a special purpose district, in our review of the Center's enabling legislation, we did not find it has the authority to levy and collect taxes. Accordingly, without the ability to tax, we do not believe the limitations in section 6-1-320 can be applied to the Center.

As for the impact of the Home Rule amendments to the South Carolina Constitution on the Legislature's ability to pass legislation with regard to the Center, we presume you are asking about the impact of article VIII, section 7, which prohibits the Legislature from passing legislation for a specific county. According to our courts, this provision prevents the Legislature from passing legislation pertaining to particular special purpose districts. As we have concluded that the Center could be classified as a special purpose district, an argument could be made that the Legislature is

prohibited based on article VIII, section 7 from passing legislation dealing with the Center. However, we believe the passage of legislation pertaining to the Center is educational in nature. Thus, under our Supreme Court's holding in Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36, regardless of the Center's classification, article VIII, section 7 likely would not prevent the Legislature from exercising its authority pursuant to article XI, section 3 of the Constitution. Nonetheless, we do not believe the Anderson County Delegation holds similar authority. Based on prior opinions of the South Carolina Supreme Court, legislative delegations are precluded by article I, section 8 of the South Carolina Constitution from maintaining the right to approve tax increases of the bodies they vest with the authority to levy a tax. Thus, we are of the opinion that the Anderson County Delegation is precluded from approving millage rate increases for the Center.

Very truly yours,

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REVIEWED AND APPROVED BY:

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