

March 20, 2007

The Honorable Phil P. Leventis  
Member, South Carolina Senate  
Post Office Box 1592  
Sumter, South Carolina 29151-1592

Dear Senator Leventis:

We understand from your letter recently submitted to Attorney General Henry McMaster that you desire an opinion of this Office concerning the application of section 6-1-320 of the South Carolina Code to provide a means by which Sumter County may increase its millage rates. In your letter, you state as follows:

Sumter County Council would like to pursue an initiative for the purchase of the residential development rights from property owners who have undeveloped agricultural property near the extended centerlines of the runways at Shaw Air Force Base (AFB). The purpose of the initiative is to prevent new residential development encroachment around Shaw AFB. If Sumter County government can acquire the residential development rights, the property will continue to be used for agricultural purposes, but new houses will not be built in the flight paths and noise attenuation areas around the base. That will reduce the impact of an accident and also reduce the number of noise complaints, all of which will be considered by the Department of Defense and the BRAC Commission when decisions are made about the future of the base. The initiative will cost somewhere between \$2.5 million and \$6.5 million, depending upon the value placed on the development rights and the total number of acres that will be affected.

In order to raise the money, Sumter County Council will have to raise the millage on the county tax bills. Section 6-1-320, S.C. Code of Laws (1976, as amended) limits the amount by which local governments can increase millage to the average consumer price index for the prior 12 months, plus the percentage increase in population. Subsection (b) lists five reasons that allow for the

limitation to be suspended and the millage rate increased. Subsection (d) lists three areas of local government finance to which the millage limitation does not apply. It would be helpful to Sumter County Council to know whether Sumter County can raise its millage under any of the five reasons in subsection (b) or any of the three exclusions listed under the subsection (d) to fund the planned initiative.

### **Law/Analysis**

As you explained in your letter, section 6-1-320 of the South Carolina Code (Supp. 2006) places a limitation on local governing bodies' ability to increase millage rates from year to year. This provision 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 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.

S.C. Code Ann. § 6-1-320(A) (emphasis added). However, several subsections of this provision provide exceptions to the general rule that millage rate increases are limited to the increase in the consumer price index. For example, subsection (B) states:

(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:

- (1) the deficiency of the preceding year;
- (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.

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.

Id. § 6-1-320(B). Moreover, subsection (D) also provides an exception to the general provision contained in subsection (A).

(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.

Id. § 6-1-320(D).

Certainly, Sumter County may qualify for one of the above exceptions allowing for an increase in its millage rate above the applicable consumer price index. However, we do not believe the circumstances described in your letter contemplate a county's ability to increase its millage rates for purposes of acquiring residential development rights to property. Interestingly, prior to last year, section 6-1-320 contained another exception to the general provision provided in subsection (A) allowing the governing bodies to override subsection (A) to allow for a millage rate increase so long as certain notice and public hearing requirements were met. However, in 2006 the Legislature amended section 6-1-320 removing this additional exception. 2006 S.C Acts 3133. Thus, in finding

The Honorable Phil P. Leventis  
Page 4  
March 20, 2007

the exceptions to the general limitation on millage rate increases not applicable for the purpose for which Sumter County wishes to increase its millage rate, we suggest Sumter County look to other means of funding the acquisition of such property rights.

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