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HENRY MCMASTER
ATTORNEY GENERAL

March 3, 2006

The Honorable Phil P. Leventis
Senator, District No. 35
P. O. Box 142
Columbia, South Carolina 29202

Dear Senator Leventis:

In a letter to this office you referenced the provisions of S.1021 and S.1025 which state

> Notwithstanding any other provision of law relating to the calculation of rollback millage, in Berkeley County, the millage imposed by the Berkeley County Board of Education for school operations and the Berkeley County Council for county operations must be rolled back to a millage calculated to generate no more property tax revenue for school and county operations than was collected in the county for that purpose for the property tax year preceding the rollback year. Notwithstanding any other provision of local law relating to the fiscal authority of the Berkeley County Board of Education or the Berkeley County Council or the law applicable to school districts and county councils generally, the special rollback millage required to be imposed for school or council operations pursuant to this act in a rollback year may not be increased by the Berkeley County Board of Education or the Berkeley County Council.
>
> Notwithstanding any other provision of law relating to the calculation of rollback millage, in Charleston County, the millage imposed by the Charleston County School District Board of Trustees for school operations must be rolled back to a millage calculated to generate no more property tax revenue for school operations than was collected in the county for that purpose for the property tax year preceding the rollback year. Notwithstanding any other provision of local law relating to the fiscal authority of the Charleston County School District Board of Trustees or the law applicable to school districts generally, the special rollback millage required to be imposed for school operations pursuant to this act in a rollback year may not be increased by the Charleston County School District Board of Trustees.

Request Letter

You commented that you are concerned that such legislation constrains the local school boards as it relates to other relevant statutes. You have specifically questioned whether the referenced proposed legislation if enacted would direct the school boards to comply in a manner that would be in direct conflict with other existing statutes that would be applicable.

In examining your question, reference should be made to S.C. Code Ann. § 59-21-1030, a provision of the Education Finance Act, which requires maintenance of a so-called "local minimum effort" by State school districts. Such provision 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. 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.

Further provisions provide for a waiver depending upon the showing of certain limited factors.

The State Supreme Court in its decision in Richland County School District One v. Richland County Council, 310 S.C. 106, 425 S.E.2d 747 (1992) indicated that Section 59-21-1030 requires that a school district maintain at least the level of financial effort per pupil as in the prior year when adjusted by the appropriate inflation factor. As stated by the Court, "[w]e hold that Section 59-21-1030 requires County to appropriate the projected EIA minimum local effort as submitted by District and reported by Department." 425 S.E.2d at 750. In its decision in Laurens County School Districts 55 and 56 v. Cox, 308 S.C. 171, 417 S.E.2d 560, 561 (1992), the Court noted that the purpose of Section 59-21-1030 was

> ...to ensure that local school districts would not decrease their own funding of education in reliance upon EIA funds with no resulting net increase in total funding. The plain language of the statute indicates local districts must maintain "at least the level of per pupil financial effort" of the prior year.

In an opinion of this office dated August 5, 1986 it was determined that a local law enacted solely for Florence School District No. 1 which appeared to conflict with the provision now codified

as Section 59-21-1030 was not controlling. That local law required a second district-wide election to be held to determine whether a millage increase to fund the operational budget of the district could be implemented. The local law specified that if the majority of electors failed to approve the increase, the authorized millage would be limited "to the millage in effect for the previous fiscal year." This office was asked to address the question of whether the local legislation negated "... with respect to Florence School District No. 1, the EIA requirement contained in Section 12-35-1557, [now, Section 59-21-1030] of maintenance of at least the level of financial effort per pupil for noncapital programs as in the prior year, adjusted for an inflation factor." In the opinion, it was determined that the state law mandate of meeting the minimum local effort controlled, notwithstanding the local legislation's very specific directive that only upon a favorable vote of the people could school millage be increased. As to the narrow question of whether the local legislation intended to set aside the state law requirement imposed upon every school district, the opinion concluded that it did not. The reasoning of the opinion was as follows:

> [a]ssuming that a conflict between the two enactments does exist, we simply do not regard the General Assembly as having intended to create an exception as to one school district in the state from the EIA requirement that a school district maintain its previous level of funding. Clearly, the Education Improvement Act was intended by the legislature to be a comprehensive and uniform act, applicable to all school districts .... It would be both extraordinary and inconsistent with the presumed legislative intent that H.3942 should impliedly repeal or suspend Section 12-35-1557 [now § 59-21-1030] for Florence School District No. 1 only.

Another opinion of this office also dated August 5, 1986 determined that the local funding requirements of Section 12-35-1557, again now Section 59-21-1030, "...must be maintained and increased as provided...." It was further stated that

> [t]o render Section 12-35-1557 operative, it must be construed to be controlling as to local legislation with respect to the setting of millage for the local effort...(T)o construe the millage provisions of Section 12-35-1557 as not being controlling would be inconsistent with the duty imposed on districts to increase the local effort. Instead, the millage provisions of Section 12-35-1557 indicate a legislative intent to provide a means for districts to ensure that they can raise the millage to meet the local effort requirements.

In an opinion of this office dated September 17, 2003 also construing Section 59-21-1030 it was stated that

> [n]either do we believe the General Assembly intended that the minimum local effort requirement is to be abandoned in certain areas of the State where local legislation may be applicable. As we stated in the 1986 opinion, "[i]t would be both extraordinary and inconsistent with ...legislative intent" for local legislation to

> impliedly suspend § 59-21-1030 in certain portions of the state. Section 56-21-1030 is a "comprehensive and uniform act...."
>
> ...The Supreme Court, as well as this office in previous opinions, has consistently concluded that the statewide mandate imposed upon each school district to provide a "minimum local effort", as defined by § 59-21-1030, must be met.

It was further noted that "[t]he 'local minimum effort' provision contained in § 59-21-1030 is mandatory. Failure to meet this obligation by a school district threatens that district's receipt of state funds." See also: Op. Atty. Gen. dated June 26, 1990 ("...it is important to uphold the integrity of the Education Improvement Act, which was designed to ensure no reductions of funds for education purposes from year to year, further ensuring stability and certainty in such funding.").

Consistent with the above, in my opinion, proposed legislation S.1021 and 1015 are inconsistent with the requirements of Section 59-21-1030. As set forth by such provision, 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...." As referenced in the prior opinions, such "minimum effort" is mandatory. Moreover, the failure of a school district to meet such requirement requires that the district not receive funds from the State Education Improvement Act fund.

If there are any questions, please advise.

Sincerely,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General