April 24, 2007

The Honorable Glenn F. McConnell
President *Pro Tempore*
South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator McConnell:

We received your letter requesting clarification on the impact of the Property Tax Reform Act (the "Act"), passed by the Legislature in 2006, on annual allocations provided to school districts under the Education Finance Act of 1977 (the "EFA"). In your letter, you state:

> When the Property Tax Reform Act was passed last year, it capped property tax on the remaining properties that could be taxed for school purposes, and it forbid any further tax on homeowners' property thus removing homeowners' property from the tax rolls for purposes of school taxes. The result of this is that all of the owner-occupied residential property in Charleston County can no longer be taxed by the school district. Therefore, the implication and result are that this property is not in the tax base for purposes of calculating the Index of Taxpayer Ability. In other words, the General Assembly, by passage of the Property Tax Reform Act, by implication, repealed, in my opinion, the Index of Taxpayer Ability by a subsequent act removing property that otherwise would have been in the calculation. It now appears that the Department of Education is continuing to use total appraised property in a county for purposes of computing the Index of Taxpayer Ability, when the Property Tax Relief Act had removed a sizeable portion from it.

Thus, you inquire as to "whether or not the Property Tax Relief Act, by its passage, has, by implication or effect, made null and void the Index of Taxpayer Ability under the EFA"?

Law/Analysis

In looking at the EFA in conjunction with the Act, we must keep in mind that "[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature." Howell v. United States Fid. & Guar. Ins. Co., 370 S.C. 505, 509, 636 S.E.2d 626, 628 (2006). The South Carolina Supreme Court in addressing the repeal of a statute by implication stated: "Repeal by implication is disfavored, and is found only when two statutes are incapable of any reasonable reconcilement. Moreover, the repugnancy must be plain, and if the two provisions can be construed so that both can stand, a court shall so construe them." Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc., 368 S.C. 137, 141, 628 S.E.2d 38, 41 (2006) (citations omitted). With these principles in mind, we look to the two bodies of law you suggest are incompatible with one another.

The EFA provides a means for State funding of education. S.C. Code Ann. §§ 59-20-10 et seq. (2004 & Supp. 2006). Section 59-20-30 of the South Carolina Code (2004) states the legislative purposes for the enactment of the EFA. In addition to insuring the availability of educational programs and services among school districts, the legislative purposes include the following:

> (3) To establish a procedure for the distribution of a specified portion of the state education funds so as to ensure that the funds are provided on the basis of need to the extent set forth by this chapter in order to guarantee a minimum level of funding for each weighted pupil unit in the State.
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> . . .
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> (5) To establish a reasonable balance between the portion of the funds to be paid by the State and the portion of the funds to be paid by the districts collectively in support of the foundation program. For the initial stage of this program the proportionate state share of the funds for this program shall be approximately seventy percent statewide and the remainder of the program shall be financed from local revenue sources.
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> (6) To require each local school district to contribute its fair share to the required local effort, which is to be in direct proportion to its relative taxpaying ability.

S.C. Code Ann. § 59-20-30.

Section 59-20-40 of the South Carolina Code (2004 & Supp. 2006) provides the formula by which annual allocations by the State to each school district are calculated. The funding each district receives is determined by calculating an initial allocation amount. S.C. Code Ann. § 59-20-40(f).

This amount then must be adjusted by deducting amounts each district is required to contribute. The initial funding allocation is determined by taking into account the number of students in each district, which is weighted by various factors including classifications and special needs of the students, and multiplying this number by a cost per student figure determined annually by the Legislature. Section 59-20-40(e) explains the calculation of each district's required contribution.

> (e) Computation of the required local revenue in support of the foundation program.
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> The amount that each school district shall provide toward the cost of the South Carolina foundation program shall be computed by determining the total statewide collective local share (approximately thirty percent) of the total cost of the foundation program, and multiplying this by the index of taxpaying ability of each district as defined in § 59-20-20.

S.C. Code Ann. § 59-20-40(e).

Section 59-20-20(3) of the South Carolina Code (2004) defines the "index of taxpaying ability" as

> an index of a local district's relative fiscal capacity in relation to that of all other districts of the State based on the full market value of all taxable property of the district assessed on the basis of property classification assessment ratios set forth in Article 3, Chapter 43 of Title 12 for the second completed taxable year preceding the fiscal year in which the index is used and these assessments must be the audited assessments by school district contained in the annual report submitted yearly to the Comptroller General's office . . . .

Under these provisions, the contribution required of a particular school district depends on the property tax values in that district. Presumably, the Legislature based the index of taxpaying ability on property values within the district because prior to the enactment of the Act, school districts were able to generate a major portion of their funding through the imposition of property taxes. Thus, in keeping with the stated legislative purposes, calculating a district's index of taxpaying ability based on property values ensured the district employs best efforts to provide its "fair share" of funding. S.C. Code Ann. § 59-20-30(6).

Beginning with the 2006 tax year, the Act exempts all owner-occupied residential property from "all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt." 2006 S.C. Acts 3133 (codified as S.C. Code Ann. § 12-37-220(B)(47)(a) (Supp. 2006)). In addition, the Act amends section 6-1-320 of the South

Carolina Code. Id. This provision limits the amounts by which a local governing body, which includes school districts, may increase its millage rates for property tax purposes. Id. Section 6-1-320 allows local governing bodies to increase their millage rates only to the extent of increases in inflation as computed by the Consumer Price Index. S.C. Code Ann. § 6-1-320 (Supp. 2006). However, this provision also provides exceptions to this general rule. Id. Prior to the Act, this provision allowed local governing bodies to override the limitation by a positive majority vote. Id. The Act removed this exception, leaving only the following five exceptions:

> (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;
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> (3) compliance with a court order or decree;
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> (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
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> (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.

S.C. Code Ann. § 6-1-320. Thus, as you alluded in your letter, the amendments to this provision narrow a school district's ability increase its millage rates other than for inflation.

To compensate for revenue lost due to the exemption of residential owner-occupied property from school millage, the Legislature enacted an additional sales, use, and excise tax of one percent. Id. (codified as S.C. Code Ann. § 12-36-1110 (Supp. 2006)). The Act calls for the funds raised through the collection of this additional tax to be deposited into a fund and ultimately, distributed to school districts as reimbursement for the funds they no longer receive from school operating millage. Id. (codified as S.C. Code Ann. §§ 12-36-1110; 11-11-156 (Supp. 2006)). Pursuant to the Act, the reimbursement received by each school district for fiscal year 2007-2008 "shall be equal to the amount estimated to be collected or reimbursed in fiscal year 2007-2008 by the district form school operating millage imposed on owner-occupied residential property therein." Id. (codified as S.C. Code Ann. § 11-11-156 (Supp. 2006)). In subsequent years, school districts shall receive this same amount received in fiscal year 2007-2008. But, this figure is adjusted annually for inflation and changes in the district's "weighted pupil units" as determined under the EFA. Id.

Under the Act, the amount of funding a district receives from property tax revenues is significantly decreased due to the additional exemption. Furthermore, as you point out in your letter, section 6-1-320 limits a district's ability to increase the millage rates on property not exempt from school millage. Accordingly, the amendments under the Act raise concern as to whether the index of taxpaying ability, as defined in section 59-20-20, should remain the measure of the local revenue requirement under the EFA. Further, you question whether the change in districts' funding under the Act implicitly repeals the portion of the EFA dealing with the calculation of the index of taxpayer ability and moreover, the districts' local funding requirement.

As stated in its legislative purposes, the EFA aims to balance State support for education with a district's ability to provide its own support. S.C. Code Ann 59-20-30. The Legislature appears to accomplish that purposes by requiring each district to make a contribution based on the district's fiscal capacity. According to section 59-20-20(3), a district's fiscal capacity or tax paying ability is based on the value of the property located in the district. However, with the passage of the Act, a district no longer receives a significant portion of its revenue from property taxes. Therefore, it's the fiscal capacity of a district as it relates to its property values is significantly diminished. Furthermore, although the Legislature provided a means to replace property tax revenues lost with sales tax revenue, sales taxes do not share a connection with property values as do property taxes. The value of the property located in a district seems irrelevant to its ability to provide its own support under the EFA. Thus, at first glance, these two bodies of law appear inconsistent with one another and could lead to an arguement that the Legislature must have intended to repeal the portion of the EFA calculating a district's fiscal capacity based on its property values. Nonetheless, with further examination of these two bodies of law, we do not believe the enactment of the Act implicitly repeals portions of the EFA.

Consistent with our duty to interpret these two bodies of law, if at all possible, as consistent with one another, we believe the provisions of the Act and the EFA are compatible. In our review of both pieces of legislation, we did not find a direct conflict between any of the provisions contained in these bodies of law. Arguably, for the reasons stated above it may not be prudent to use the fair market value of a district's property to determine its index of taxpaying ability. However, this fact does not render application of both the provisions under the Act and those under the EFA impossible. The market value of the property within the district remains determinable even if the means by which districts are supported shifts from property tax revenue to sales tax allocations. Thus, while the fair market value of the property located in the district has less relevance to the district's capacity to generate its own funding, the passage of the Act does not make the calculation of a district's contribution under the EFA impossible. Thus, given the standard by which our Supreme Court reviews statutes, we do not believe a court would find the Act repeals portions of the EFA by implication.

Moreover, we also do not believe the Legislature intended to repeal portions of the EFA when it enacted the Act. Throughout the Act we find references to portions of the EFA. For instance, section 11-11-156(A)(2) of the South Carolina Code (Supp. 2006), stating the method upon

which school districts shall be reimbursed, refers to the calculation of statewide public units as determined under the EFA in order to account for necessary adjustments to the districts' allocations. Furthermore, section 11-11-156(B)(1) of the South Carolina Code (Supp. 2006) states: "The distributions to a county and then to a school district under this subsection shall be considered to be outside of the Education Finance Act and shall not be considered when computing the maintenance of local effort required of that district under the Education Improvement Act." The incorporation by reference of the provisions contained in the EFA not only indicate the Legislature's intent not to repeal provisions of the EFA, but section 11-11-156(B)(1) further clarifies the Act's impact on the EFA. Accordingly, we believe the Legislature intended these two bodies of law to coexist.

In our review of both the Act and the EFA, we also found other indications that the EFA remains intact despite the enactment of the Act. First, we note although school districts no longer receive funding from property taxes generated by residential owner-occupied property, they continue to receive property tax revenue from other types of property. Thus, property values in the district, while not as relevant to a district's tax paying ability as prior to the enactment of the Act, continue to be a valid consideration. Second, the Act indirectly considers property values when determining the allocations of sales tax revenues to districts. The Legislature structured the Act to compensate districts for the revenue lost by their inability to collect property taxes on residential owner-occupied property. Pursuant to the Act, the amount received by a school district in fiscal year 2007-2008 is based directly upon the property taxes the district would have collected if it levied taxes on owner-occupied residential property. S.C. Code Ann. § 11-11-156(A)(1) ("the reimbursements for fiscal year 2007- 2008 shall be equal to the amount estimated to be collected or reimbursed in fiscal year 2007-2008 by the district from school operating millage imposed on owner-occupied residential property therein."). Presumably, these figures are based in part on the value of the property located in the district. Thus, at least for the first year, a district's property values appear relevant in determining the district's contribution under the EFA in keeping with the purposes of the EFA.

As for the subsequent years, the 2007-2008 allocation serves as a base allocation with adjustments made for changes in the number and types of students served by the district and to account for inflation. The consideration of inflation may account for some changes in property values within a district. But, we imagine property values will become less pertinent in subsequent years because the Act does not continue to take into account the amounts a district would have received if it collected property taxes on owner-occupied residential property. Therefore, a district's property values become less relevant to its ability to generate its own revenue to support its operations.

Accordingly, basing a district's ability to provide its own funding on the property values located in the district may no longer be prudent as it does not clearly reflect the district's fiscal capacity. While we do not find the Act and the EFA incompatible in such a way that we believe a court would find the passage of the Act implicitly repealed portions of the EFA, we believe the continued use of property values to determine the contribution required of school districts under the EFA raises policy questions that should be considered by the Legislature.

Conclusion

Pursuant to the EFA, the value of property located in each district determines the district's ability to provide its own funding. With the passage of the Act, school districts are no longer primarily funded by property tax revenue and therefore, property values are less relevant to the districts' ability to providing their own funding. Therefore, at first glance, it may appear the Legislature intended to repeal portions of the EFA calculating districts' fiscal capacity based on their property values. However, implied repeals are disfavored under the law. In our examination of the provisions of the Act and the EFA, recognizing our duty to construe statutes as reconcilable if at all possible, we did not find these provisions are incapable of reconciliation. Furthermore, we do not believe, based on the references to the EFA contained in the Act and at least one of the Act's provisions that appears to reconcile these two bodies law, that a court would find the Act implicitly repeals the EFA. Notwithstanding the fact that we do not find portion of the EFA implicitly repealed by the Act, we note the continued use of property values to determine a district's ability to provide its own funding creates a policy question best addressed by the Legislature.

Very truly yours,

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Attorney General

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REVIEWED AND APPROVED BY:

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