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OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

September 17, 2003

Melvin B. McKeown, Jr., Esquire
P. O. Drawer 299
York, South Carolina 29745

Dear Mr. McKeown:

You represent Fort Mill School District No. 4 of York County. Your request is for an opinion "regarding the interpretation and application of S.C. Code Ann. Sec. 6-1-320." This provision contains a limitation upon millage rate increases by local governments. You note that there "appears to be a conflict between §§ (b)(4) and (e)" of § 6-1-320, and thus you have requested an opinion as to how this apparent conflict may be resolved.

This question arises because § 59-21-1030 of the Education Finance Act requires the maintenance of a so-called "local minimum effort" by South Carolina school districts. Section 59-21-1030 provides in pertinent part that

> 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 non-capital programs adjusted for an inflation factor established by the Division of Research and Statistics 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. School district boards of trustees may apply for a waiver to the State Board of Education from the requirements of this Section ... .

You also point out that § 6-1-320(A) states that a local governing body is authorized to increase the millage rate 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 consumer price index for the preceding calendar year." Subsection (C) further provides that the foregoing millage limitation "may be overridden and the millage may be further increased by a positive majority vote of the appropriate governing body" at the specially-called meeting "held solely for the purpose of taking a vote to override the limitation and increase the millage rate." Notice of this specific purpose must be given the public and there must be public comment received.

However, as you indicate, Subsection (B) of § 6-1-320 establishes four specific exceptions to the millage limitation contained in Subsection (A). Subsection (B)(4) provides that

> [n]otwithstanding the limitation upon millage rate increases contained in subsection (A), the millage rate limitation may be suspended and the millage rate may be increased for the following purposes:
>
> > ... (4) to meet the minimum required local Education Finance Act inflation factor as projected by the State Budget and Control Board, Division of Research and Statistics, and the per pupil maintenance of effort requirement of Section 59-21-1030, if applicable.

An apparent ambiguity, however, is created by subsection (E) of § 6-1-320. That portion of the statute reads as follows:

> (E) [n]otwithstanding any provision contained herein, this article does not and may not be construed to amend or to repeal the rights of a legislative delegation to set or restrict school district millage, and this article does not and may not be construed to amend or repeal any caps on school millage provided by current law or statute or limitation on the fiscal autonomy of a school district as currently in existing law. (emphasis added).

You note that there does exist such a "cap[] on school tax millage" for York County. See, e.g. Act No. 744 of 1990. This provision prohibits any increase in millage above six mills "in any year over that levied the previous year without the approval of the qualified electors of the district in a referendum."

Thus, the question which you have raised by your letter is which subsection of § 6-1-320 – subsection (B)(4) or subsection (E) – is controlling. If subsection (B)(4) governs, then the millage limitation contained in § 6-1-320(A) "may be suspended and the millage rate may be increased" to meet the minimum local effort requirement of § 59-21-1030. However, if subsection (E) controls, there must be compliance with the millage limitation set forth in Act No. 744 of 1990.

Law / Analysis

Several principles of statutory construction are pertinent here. Of course, the primary consideration in interpreting any statute is ascertaining the intent of the Legislature. Citizens and Southern Systems, Inc. v. South Carolina Tax Commission, 280 S.C. 138, 311 S.E.2d 717 (1984). All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can reasonably be discovered in the language used. Clearly, the legislative language must be construed in light of the General Assembly's intended purpose. State ex rel. McLeod v.

Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). In essence, the statute as a whole must receive a reasonable, practical and fair interpretation consistent with the purpose, design and policy of the lawmakers. Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948).

Moreover, the legislation's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or to expand the operation of the statute. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). The plain meaning of the statute cannot be contravened. State v. Leopard, 349 S.C. 467, 563 S.E.2d 342 (2002).

Furthermore, in determining legislative intent, the statute as a whole must be examined and construed together. Small v. Weed, 293 S.C. 364, 360 S.E.2d 531 (Ct. App. 1987). A statute should, in other words, be interpreted so that all of its parts harmonize with each other and render them consistent with the law's general scope and object. Crescent Mfg. Co. v. Tax Comm, 129 S.C. 480, 124 S.E. 761 (1924). In that regard, where provisions of the same Act appear to conflict with one another, the last legislative expression ordinarily governs. South Carolina Electric and Gas Company v. South Carolina Pub. Serv. Auth., 215 S.C. 193, 54 S.E.2d 777 (1949). Conflicts between general provisions and special ones are usually resolved in favor of the special provision, which will be deemed an exception to the general one. Wilder v. S.C. State Highway Dept., 228 S.C. 448, 90 S.E.2d 635, 638 (1955).

While words in a statute must be given their plain and ordinary meaning, our Supreme Court has cautioned against an overly literal interpretation of a statute which may not be consistent with legislative intent. In Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942), the Court recognized that "[i]t is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter. It is an old and well-established rule that the words ought to be subservient to the intent and not the intent to the words. Id., at 368-369.

Finally, a statute must be construed with common sense to avoid unreasonable consequences. U.S. v. Rippetoe, 178 F.2d 735 (4th Cir. 1950). A sensible construction, rather than one which leads to irrational results, is always warranted. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Thus, where there appear to be conflicts within a statute, we must make every effort to reconcile them consistent with legislative intent. Adams v. Clarendon Co. School Dist. No. 2, 270 S.C. 266, 241 S.E.2d 897 (1978).

In Richland County School District One v. Richland County Council, 310 S.C. 106, 425 S.E.2d 747 (1992), the South Carolina Supreme Court held that § 59-21-1030 requires a school district to maintain at least the level of financial effort per pupil as in the prior year adjusted for the appropriate inflation factor. The Court further held that the county auditor is required to set the millage so that minimum effort per pupil is generated. In the words of the Court, "[w]e hold that § 59-21-1030 requires County to appropriate the projected EIA minimum local effort as submitted by District and reported by [State] Department [of Education." 425 S.E.2d at 750.

Furthermore, in Laurens County School Districts 55 and 56 v. Cox, 308 S.C. 171, 417 S.E.2d 560, 561 (1992) the Court noted § 59-21-1030's purpose.

> ... [T]o ensure that local school districts would not decrease their own funding of education in reliance upon [state] 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. However, the trial judge's interpretation here does the exact opposite. It mandates no increases, except for inflation. The result is that local districts are inhibited from going beyond the level of the financial effort set for 1983-84 year. This is in contravention of the clear meaning and purpose of the statute to provide a minimum, not maximum, financial effort by school districts.

Similarly, in Op. S.C. Atty. Gen., August 5, 1986, we concluded that a local law enacted solely for Florence School District No. 1, which at first blush, appeared to conflict with what is now § 59-21-1030, was not controlling. The local legislation 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." We were 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, § 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."

We concluded 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; in the narrow context of whether the local legislation intended to set aside the state law's requirement imposed upon every school district, we concluded that it did not. Our reasoning 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. Instead, we read H.3942 as an expression of finality with respect to local school tax increases in Florence School District No. 1 in 1986-1987; we believe, the Legislature simply intended by H.3942 that if the second referendum were not approved by the voters of Florence School District No. 1, the authorized millage for that school district

> would then be limited to that otherwise required by state law. In short, we construe the two statutes together as requiring that a failure of passage of the referendum means that Florence School District No. 1 would have no additional tax increases in 1986-87 beyond those which may be required by Section 12-35-1557, a statute applicable to school districts generally. Such a construction not only preserves the uniformity and integrity of the Education Improvement Act, but gives effect to the intent of the General Assembly and the voters of Florence School District No. 1 that additional school taxes be limited for this year. This conclusion is consistent with an opinion issued by this Office wherein it was concluded 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.' See, Op. Atty. Gen., August 5, 1986 ... .
>
> Accordingly, it is our conclusion that H.3942 does not impliedly repeal or limit Section 12-35-1557, but instead the two provisions may be read in conjunction with and in harmony with one another.

With this background in mind, we turn now to the specific text of § 6-1-320. Subsection (B) of § 6-1-320 specifies an exception to the limitation upon millage increases by the local governing body in four specific instances. Those exceptions provided are generally for extraordinary occurrences beyond the control of the local governing body: disasters, deficits, the occurrence of a judicial mandate or the requirement imposed by state law that the minimum local effort mandated by § 59-21-1030 must be met. On the other hand, § 6-1-320(E) employs the very explicit language of "[n]otwithstanding any provision contained herein ... this article does not and may not be construed to amend or repeal any caps on school millage provided by current law or statute or limitation on the fiscal autonomy of a school district as currently in existing law."

At first blush, these two provisions seem in irreconcilable conflict. Subsection (E) appears to govern because that paragraph is subsequent to Subsection (B) and uses the very exacting language "[n]otwithstanding any provision contained herein," which would appear to encompass Subsection (B) as well.

Subsection (E) goes on to say that no provision in the Article "may ... be construed to amend or to repeal any caps on school millage by current law or statute ... ." However, if the same reasoning as the previous opinion relating to Florence School District No. 1 is adopted, there is no conflict between Subsections (B) and (E). The two relevant provisions thus could be "read in conjunction with and in harmony with one another." Id.

We believe the same reasoning which we articulated in the August 5, 1986 opinion, discussed above, is persuasive in this instance as well. Subsection (B) of § 6-1-320 establishes four specific exceptions to the limitations of § 6-1-320. Thus, when Subsection (E) refers to "any provision contained herein" it is logical that the General Assembly was not referring to Subsection (B) which

had already established certain exemptions. Moreover, to read Subsection (E)'s reiteration that all local tax caps remain in place as overriding the exceptions contained in Subsection (B), would render those exceptions nugatory. We do not believe the General Assembly intended this result, especially since the Subsection (B) exceptions are so specific. Where one provision deals with a matter in general terms (here, Subsection E) and another encompasses the same matter in more specific terms (Subsection B), the more specific provision will be considered an exception to, or qualifier of the general provision and given such effect. Whiteside v. Cherokee Co. Sch. Dist. No. 1, 311 S.C. 335, 428 S.E.2d 886 (1993).

It is important also to note that Subsection (B)(2) deals with the constitutional requirement of Article X, § 7 of the South Carolina Constitution. If § 6-1-320(E) is deemed controlling as to the exceptions of Subsection (B), this would mean that a deficit could not be remedied where a local tax cap existed. In essence, the constitutional requirement could, because of the presence of local legislation, be ignored. Again, we do not believe the General Assembly intended this illogical and unconstitutional result.

Neither 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 59-21-1030 is a "comprehensive and uniform act ...." Id. Thus, in our opinion, a court would most likely read §§ 6-1-320(B)(4) and (E) together, concluding that the four exemptions specifically referenced in Subsection (B) constitute exceptions to Subsection (E). This reading gives effect to all of § 59-21-1030 as well as to the millage limitation now in effect in York County.

Conclusion

In our opinion, while § 6-1-320 is ambiguous and appears to create a conflict between Subsections (B) and (E), a court would likely read these two provisions in conjunction with and in harmony with each other in an effort to reconcile any apparent conflict. Thus, a court is likely to conclude that a local governing body could not raise tax millage in excess of the tax cap established by local legislation, except in those specific, extraordinary circumstances enumerated in Subsection (B). In this instance, that millage limit increase for York County is six mills per year. This millage cap could not be exceeded except in the extraordinary circumstances enumerated in Subsection (B): disaster; deficit; court-ordered mandate or to meet the "minimum local effort" requirement of § 59-21-1030.

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. In enacting local legislation imposing a tax cap, the Legislature is obviously aware of the need by local districts to meet the "minimum local effort"

requirement. That such recognition is clear is exemplified by the fact that § 6-1-320(B)(4) itself creates an exception to a millage limitation for the requirement of meeting minimum local effort. If the Legislature had intended that the uniformity of this statewide requirement of minimum local effort could be overridden or altered by local legislation pursuant to § 6-1-320(E), thereby rendering the local effort mandate virtually meaningless, the General Assembly would surely have expressly so stated.

The "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. We do not construe § 6-1-320(E) as altering this obligation. However, we stress that local millage increases outside the scope of the extraordinary exceptions contained in § 6-1-320(B) are to be limited by "current law or statute" in accordance with § 6-1-320(E).

Therefore, it is our opinion that a court would interpret § 6-1-320(E) as prohibiting any millage increase in excess of that established by local legislation (i.e. 6 mills) except in the four extraordinary circumstances specified in § 6-1-320(B). One of these extraordinary circumstances is to meet the "minimum local effort" requirement of § 59-21-1030. Accordingly, in our opinion, the General Assembly intended that this statewide mandatory requirement is an exception to York County's local tax increase cap, currently established at 6 mills per year.

Sincerely,

Robert D. Cook
Assistant Deputy Attorney General

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