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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 16, 2000

The Honorable G. Ralph Davenport, Jr.
Member, House of Representatives
105 Ashland Terrace
Boiling Springs, South Carolina 29316

RE: Informal Opinion

Dear Representative Davenport:

By your letter of September 21, 2000, you have requested an opinion of this Office concerning the allowable millage rate imposed by a special purpose district. By way of background, you enclose a letter from a constituent informing us of the following: A fire district in Spartanburg County held a referendum in which the people of the district voted to have 16 mills billed for fire taxes. The Board of Commissioners of the fire district is comprised of appointees by the Governor. The county auditor refuses to bill the millage rate, claiming that "all the... fire district can receive in tax money is what they had the prior year plus the CPIU for the new year and any growth." Furthermore, the auditor claims that in order to bill the yearly 16 mills authorized by the referendum, the fire district would have to hold a referendum every year. You ask now for clarification in this dispute between the county auditor and the fire district.

Local governing bodies, including special purpose districts, have somewhat limited authority to increase the millage rate imposed for operating expenses. State law provides a mechanism for these bodies to make minimal changes in the millage rate each year to account for inflation, excepting reassessment years when the rollback millage rate is used. South Carolina Code Section 6-1-320 reads, in part:

> (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 consumer price index for the preceding calendar year. 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.

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(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 for the following purposes:

(1) in response to a natural, environmental, or other disaster as declared by the Governor;
(2) to offset a prior year's deficit, as required by Section 7, Article X of the South Carolina Constitution;
(3) to raise the revenue necessary to comply with judicial mandates requiring the use of county or municipal funds, personnel, facilities, or equipment;
(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.

(C) The millage rate limitation provided for in subsection (A) of this section may be overridden and the millage rate may be further increased by a positive majority vote of the appropriate governing body. The vote must be taken at a specially-called meeting held solely for the purpose of taking a vote to increase the millage rate. The governing body must provide public notice of the meeting notifying the public that the governing body is meeting to vote to override the limitation and increase the millage rate. Public comment must be received by the governing body prior to the override vote.

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The limitation on yearly increments to the consumer price index does not apply in certain circumstances, as evidenced by subsections (B) and (C) above. Subsection (C) allows the limitation to be overridden upon a vote of the governing body. This provision would allow certain special purpose districts, for example, to increase the millage rate above the change in the consumer price index after the proper steps are taken to provide notice to the public of a meeting to vote on the change.

In 1997, the South Carolina Supreme Court struck down as unconstitutional a state statute that created a county recreation commission, comprised of appointed members, with the authority to levy a tax of up to five mills per year. Weaver v. Recreation District, 328 S.C. 83, 492 S.E.2d 79 (1997). The Court held that the delegation of authority to an appointed body to levy up to five mills unconstitutionally permits taxation without representation. The Court also directed that the holding would be applied prospectively, beginning December 31, 1999. Thus, special purpose districts in which the governing body is appointed, not elected, could not proceed under Section 6-1-320 (C) to increase the millage rate above the change in the consumer price index.

In 1998 the General Assembly passed Act No. 397, Acts and Joint Resolutions, to clarify the authority of certain special purpose districts to levy millage. See J.C. Lawyer v. Hilton Head Public

Service District No. 1, Beaufort County, 220 F.3rd 298, 300 (4th Cir. 2000). Section 4 of Act 397 added Section 6-11-271, which reads, in part:

> (A) For purposes of this section, "special purpose district" means any special purpose district or public service authority, however named, created prior to March 7, 1973, by or pursuant to an act of the General Assembly of this State.
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> . . .
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> (D) Notwithstanding any other provision of law, any special purpose district within which taxes are authorized to be levied for maintenance and operation in accordance with the provisions of subsections (B) or (C) of this section, or otherwise, may request the commissioners of election of the county in which the special purpose district is located to conduct a referendum to propose a modification in the tax millage of the district. Upon receipt of such request, the commissioners of election shall schedule and conduct the requested referendum on a date specified by the governing body of the district. If approved by referendum, such modification in tax millage shall remain effective until changed in a manner provided by law.
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> (E)(1) All special purpose districts located wholly within a single county and within which taxes are authorized to be levied for maintenance and operation in accordance with the provisions of subsections (B) or (C) of this section, or otherwise, are authorized to modify their respective millage limitations, provided the same is first approved by the governing body of the district and by the governing body of the county in which the district is located by resolutions duly adopted. Any increase in millage effectuated pursuant to this subsection is effective for only one year.
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> (2) Any millage increase levied pursuant to the provisions of item (1) of this subsection must be levied and collected by the appropriate county auditor and county treasurer.

Two alternatives are provided by Subsections (D) and (E) to increase the millage levied by special purpose districts. Subsection (D) requires a referendum for a permanent increase in the millage levy and subsection (E) requires written permission from the governing body and governing county for an increase applicable for one annual tax levy. Also, as subsection (D) indicates by the phrase "Notwithstanding any other provision of law," these provisions allow the increase in the millage rate notwithstanding the general limitation imposed by Section 6-1-320.

We are advised that the fire district has already conducted the referendum calling for an increase in the millage rate to sixteen mills. Under Section 6-11-271(D) that increase in the millage rate should remain in effect "until changed in a manner provided by law," which would quite probably be another referendum. Thus, the millage rate voted in the referendum should be billed each

year until affirmatively changed. Although we are unaware of the authority the county auditor relies upon in refusing to bill the increased millage rate, it is our intention that this opinion provide some clarification in the dispute. In short, where the people have voted for an increased millage rate, the Legislature has recognized that the voters' decision will stay in place until affected by law.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General