



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

April 27, 2001

The Honorable Mike Fair
Member, South Carolina Senate
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Fair:

By your letter of April 4, 2001, you have requested an opinion of this office concerning the Greenville County School District and its authority to increase the millage rate after a referendum of the voters. You have asked specifically whether the question presented to the voters would authorize a "one time" increase of the additional millage or "if the referendum would have the effect of changing the limit to 13 mils from the current 4 mils that the Board enjoys."

Act No. 602, 1992 Acts and Joint Resolutions ("Act No. 602") granted limited fiscal autonomy to the Greenville County School District. The School District's Board of Trustees must prepare a budget annually and recommend to the county auditor the millage necessary to defray the District's expenses. See Act No. 602, Section 1(B). "For a given fiscal year" the Board is authorized to increase the millage rate to account for changes in the budget due to inflation, newly mandated programs, and fluctuations in income. See id. at Section 1(C). Section 1(D) limits the Board's increase in millage rate to four mills "in any one year." The subsection further states that "if the board finds it necessary to increase the budget beyond the limits prescribed in this subsection, it shall submit the question to the qualified electors of the district by referendum."

Accordingly, the Greenville County School District is conducting a referendum seeking "additional budget authorization" from the voters to increase the millage beyond the four mill limit allowed by Act No. 602. The question is worded as follows:

Shall the School District of Greenville County be authorized to levy additional millage of up to, but not to exceed 9.9 mills, to fund identified educational needs proposed by the Superintendent and approved by the Board of Trustees?

The question, if favored, clearly authorizes the School District's Board of Trustees to levy an increase of additional millage beyond the four mill increase allowed by Act No. 602. But the question as presented makes no mention of whether the Board would have the authority to increase the millage beyond a four mill increase for only one year, or, in the alternative, year after year without the necessity of a yearly referendum. Indeed, because there are no words of limitation, the question standing alone might be construed to authorize the latter, in which the Board would then have the discretion in the future to levy up to an additional 13.9 mills without consulting the voters in a referendum.

Despite any ambiguity in the wording of the question, however, the referendum cannot vest the District with more authority than that allowed by the provisions of the enabling legislation creating the District's fiscal autonomy. In other words, no matter how the question is phrased, the District remains subject to the limitations on its authority provided for in Act No. 602. One of the limitations apparent in the Act is the requirement that the Board revisit its budget decisions on a year by year basis: the "annual budget... must be determined in accordance with this act;" the board "annually shall prepare a budget and recommend ... millage;" "For a given fiscal year, the board may increase the millage...;" and "The board may increase the budget... not to exceed four mills in any one year." See Act No. 602. Furthermore, in the same subsection, the Board's authorization to increase the millage by four mills "in any one year" is immediately followed by the authorization to submit a further increase to the voters by referendum. The referendum is presupposed on the Board's need to increase the budget by more than four mills "in any one year." Thus, we believe the outcome of the referendum would also be applicable only to the budget for that one year. By way of illustration, if the referendum passes, the District may levy up to the additional 9.9 mills for the next year. Those additional 9.9 mills become a permanent part of the budget. The following year, the District may increase the budget beyond that amount by four mills, but cannot again increase it by an additional 9.9 mills without another referendum.

In sum, although the absence of any words of limitation in the question presented in the referendum might lead one to conclude that the District may levy the additional increased millage year after year, the limitation placed on the District in the fiscal autonomy enabling legislation prohibits such an extension of power beyond one year. The referendum appears to be a mechanism for increasing revenue, upon approval of the voters, in a year of unexpected or uncommonly high increases in costs. The District already has the authority to increase the millage by small amounts, four mills, on a yearly basis. We think it is presumed by this legislation that an unusually large increase in millage beyond four mills in any one year is reserved for rarer circumstances, and thus requires the vote of the people on every occasion.

The Honorable Mike Fair
Page 3
April 27, 2001

Conclusion

The voters of Greenville School District control their own destiny when it comes to new tax increases. Voter approval of the proposed tax increase in May does not erase the requirement of voter approval of tax increases in the future. The General Assembly has mandated that each new tax increase for Greenville School District of greater than 4 mills must be approved by the voters in a separate referendum. As I read the law, Greenville homeowners cannot be subject to new school tax increases without the consent of the people on each occasion a tax increase of greater than 4 mills is sought.

Sincerely,

A handwritten signature in black ink, appearing to read "Charlie Condon". The signature is fluid and cursive, with the first name "Charlie" written in a larger, more prominent script than the last name "Condon".

Charlie Condon
Attorney General