



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

September 30, 1996

The Honorable Harriett L. Rucker  
Member, Newberry County Board of Education  
2213 Main Street  
Newberry, SC 29108

The Honorable TEC Dowling  
Superintendent  
Newberry County School District  
P.O. Box 718  
Newberry, SC 29108

Dear Mrs. Rucker and Superintendent Dowling:

Each of you have requested legal advice regarding the maintenance of local effort requirements for school districts set forth in S.C. Code Ann. § 59-21-1030 (Supp. 1995). This statute, as you know, requires school districts to "...maintain at least the level of financial effort per pupil as in the prior year adjusted for an inflation factor...." Because your questions are interrelated, I am providing this combined response. The questions are addressed below and arise from your reports that your school district had actual revenues in excess of budgeted revenues for fiscal year 1995-96 because, in part, the average daily membership (ADM) was overestimated.<sup>1</sup>

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<sup>1</sup> You have not questioned whether a "public hearing" actually has to be held by the district. Section §6-1-70 references §4-9-130 (1986) which does require public hearings before certain action by county councils. Although §4-9-130 does not apply to school districts, the passage of notice requirements for such hearings by school districts suggests a legislative intent to require those bodies to hold such hearings on budgets. South Carolina Department of Highways and Public Transportation v. Dickinson, 281 S.C. 134, 341 S.E. 2d 134 (1986) ("The ... primary function in interpreting a statute is to ascertain the intention of the legislature.....")

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1. MUST REVENUE IN EXCESS OF BUDGET ESTIMATES BE USED AS A BASE FOR CALCULATING THE LOCAL EFFORT REQUIREMENTS FOR THE FOLLOWING FISCAL YEAR?

This question remains the subject of differing opinions and may need to be resolved by a declaratory judgment action or legislative clarification.

A previous opinion of this Office limited to Laurens County suggested using the previous year's budgeted amount as the financial effort by which the inflation factor is to be multiplied. Ops. Atty. Gen. (6-26-90). This budgeted amount would not include the surplus. The limitations and cautions in this opinion reflected that litigation was pending related to this issue which the Supreme Court later decided. Laurens County School District v. Cox, \_\_\_ S.C. \_\_\_, 417 S.E. 2d 560 (1992). That case held that "local effort and revenue are synonyms", but it did not expressly determine whether those revenues were the actual collections or the budgeted amounts. Although some language in the opinion suggests that the court may have had collections in mind ("...[the] dispute has been which figure... revenues collected or funds actually expended..." 417 S.E. 2d at 561), the Court does not expressly address a surplus situation.

I note also that you have submitted documents suggesting that the State Board of Education may interpret the local effort requirements to include the surplus as well as the budgeted revenues in the calculations. In contrast, the Department of Revenue, in a prior letter concerning the Colleton School District, indicates that the appropriated revenue is the basis for calculating the minimum effort rather than the actual revenue. (9-21-95). Certainly, administrative interpretations of statutes are entitled to "...the most respectful consideration and will not be overruled absent compelling reasons" (Dunton v. South Carolina Board of Examiners in Optometry, 291 S.C. 221, 353 S.E. 2d 132 (1987)): however, these interpretations vary as between these agencies.

The above authority and your own questions indicate that unresolved questions and differing viewpoints remain concerning the calculation of local effort. To resolve them with certainty, you may want to seek a declaratory judgment or legislative clarification.

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2. MAY THE EXCESS REVENUE BE CARRIED FORWARD AND USED TO MEET THE LOCAL EFFORT REQUIREMENTS IN THE FOLLOWING FISCAL YEAR?

Yes, the surplus may be carried forward and expended in the subsequent fiscal year under a properly approved budget, but the calculation of the local effort for that year remains in question as indicated above. See Ops. Atty. Gen. (Nos. 79-95 (7-18-79) & 78-52 (3-17-78); 11-6-85)

3. MAY THE SCHOOL DISTRICT INTENTIONALLY UNDERESTIMATE THE AVERAGE DAILY MEMBERSHIP (ADM) ADM FOR THE FOLLOWING FISCAL YEAR TO ADJUST THE LOCAL EFFORT REQUIREMENTS IN RESPONSE TO THE EXCESS REVENUE?

No. Section 59-20-40 (1) (a) states that the "... (ADM) will be computed, currently maintained and reported in accordance with the regulations of the State Board of Education." Certainly, no legislative intent<sup>2</sup> is indicated that would permit intentional underestimation of this figure.

4. MAY THE DISTRICT BE CONSIDERED FOR A WAIVER OF LOCAL EFFORT REQUIREMENTS BY THE STATE BOARD OF EDUCATION IF IT UNINTENTIONALLY UNDERESTIMATES THE DECREASE IN THE ADM?

Yes, under the authority set forth in Ops. Atty. Gen. (April 21, 1992), at least if the described circumstances lead to less than the anticipated amount of revenue. §59-21-1030. Of course, whether to grant the waiver is a matter for the State Board of Education to determine. Id.

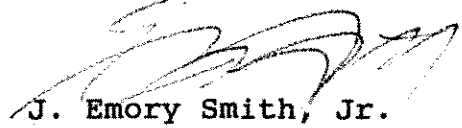
This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the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

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<sup>2</sup> The "...primary function in interpreting a statute is to ascertain the intention of the legislature." South Carolina Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E. 2d 134 (1986). "Where the terms of a statute are clear and unambiguous, there is no room for interpretation and we must apply them according to their literal meaning." Id.

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Yours very truly,

A handwritten signature in dark ink, appearing to read "J. Emory Smith, Jr.", written over the typed name.

J. Emory Smith, Jr.  
Assistant Deputy Attorney General

JESjr