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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 10, 1997

Mr. Donald Black
Chairman, Saluda County Fire Board
Post Office Box 430
Batesburg, South Carolina 29006

Re: Informal Opinion

Dear Mr. Black:

I am in receipt of your opinion request. Your question involves the Saluda County Council's funding of the Saluda County Fire Board. According to the information provided, the Saluda County Council has reduced the amount of money budgeted for the Saluda County Fire Board. You have informed this Office that the tax millage set by county council last year raised \$206,000. The tax millage set by county council this year raised \$150,000. However, according to your letter, the county council only provided the Fire Board with \$87,000 of this \$150,000. You indicate that the reason for this deduction was the fact that there was a surplus from the preceding year's tax levy. Since I am unfamiliar with the exact manner in which council enacted this tax levy, this opinion cannot specifically address whether council's actions were proper under the law. Instead, this opinion will discuss the general rules of law regarding the stated purpose of a tax levy and the expenditure thereof.

Article X, Section 5 of the South Carolina Constitution provides in pertinent part that

No tax, subsidy, or charge shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives

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lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.

Annual budgets are required by Article X, Section 7(b) of the State Constitution. The pertinent language is that

Each political subdivision of the State as defined in Section 14 of this article and each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses each year.¹

In addition, Article X, Section 8 provides that

Money shall be drawn from the treasury of the State or the treasury of any of its political subdivisions only in pursuance of appropriations made by law.

It is thus constitutionally mandated that (a) for any tax levy the public purpose for which the same is levied must be distinctly stated, (b) the county must adopt an annual budget and provide sufficient income to fund the same and (c) money can only be paid out pursuant to an appropriation. Op. Atty. Gen. dated April 1, 1991.

The language of Article X, Section 5 is clear in that a tax cannot be levied for one purpose and, in the absence of that purpose being satisfied, diverted to fund other expenses. State v. Osborne, 193 S.C. 158, 7 S.E.2d 526 (1940). Therefore, if the county levies a tax for a specific purpose, such as fire protection, the county cannot divert the taxes to pay for other expenses unless the purpose for which the tax was levied was satisfied.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific

¹ Section 4-9-140 of the South Carolina Code of Laws codifies this constitutional requirement that annual budgets be adopted. This Section provides in part that

County Council shall adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted. Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources.

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questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch
Assistant Attorney General