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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

December 4, 1998

Elizabeth Kears Gooding, Esquire
Allendale County Attorney
Post Office Box 1000
Allendale, South Carolina 29810

RE: Informal Opinion

Dear Ms. Gooding:

Your opinion request has been forwarded to me for reply. On behalf of the Allendale County Auditor and the Allendale County Council, you have requested an opinion on the application of Act No. 577 of 1992, as it relates to the 1998-1999 Allendale County School District budget.

You have informed this Office of the following:

Last year (1997-98), the total local school district millage for operations was 152 mills. The County Auditor and Council interpret Act #577 as limiting this year's tax levy for operations to 160 mills, or 8 mills over last year's levy. The inflation factor of 2.2% accounts for 4 of the additional mills, and the Act itself specifies the additional 4 mills as a cap.

Last year the value of a mill in Allendale County was \$25,963.00. The value of a mill dropped this year to 24,690.00, primarily as a result of appeals filed by two industries contesting their assessments.

The School District's 1998-99 budget requested \$4,133,569.00 for operations. The 8 mill increase would authorize only \$3,950,400.00 for operations. This cuts the School's requested operational budget by \$183,169.00.

Request Letter

The School District maintains that the correct method for calculating the cap of Act #577 is to start with last year's dollar figure for the operational budget (\$3,942,971) and apply the 2.2% inflation factor to arrive at a preliminary figure of \$4,029,716.00. The School District maintains that whatever number of mills is necessary to generate this \$4,029,716.00 is a permissible millage increase and that the additional 4 mills is then added to this. The School District's calculations would therefore be presented as follows:

$$\begin{aligned} & \$3,942,971 + 2.2\% \\ & \$3,942,971 + \$86,745 = \$4,029,716 \\ & \$4,029,716 \text{ [divided by] } \$24,690 \text{ per mill} = 163.21 \\ & 163.21 \text{ mills} + 4 \text{ mills} = 167.21 \text{ mills} \\ & 167.21 \text{ mills} \times \$24,690 \text{ per mill} = \$4,128,414 \end{aligned}$$

The Auditor and County Council interpret Act #577 literally which states that the proposed new tax levy may not exceed the preceding year's millage by more than 4 mills, excluding the inflation factor. The Auditor and Council believe it is in error to substitute the dollar amount of last year's operations budget in the formula when the Act plainly states that it is the preceding year's millage that is used as the basis for the calculation.

With the preceding in mind, you have asked two questions:

1. What is the correct method for calculating the cap as set forth in Act #577?
2. Does the Auditor have the responsibility or right to insure that the school district's tax levy complies with the cap as set forth in Act #577?

LAW/ANALYSIS

Act No. 577 of 1992 provides in pertinent part as follows:

Section 1. The Allendale County Board of Education shall prepare and

submit to the county auditor on or before April first of each year a proposed budget and an annual tax levy for the ensuing school year. In order to obtain funds to implement this budget the board may impose an annual tax levy, not to exceed the preceding year's millage by more than four mills, excluding the required inflation factor contained in the Education Improvement Act and the Education Finance Act. (Emphasis added).

...

Upon certification by the board to the county auditor of the tax levy to be imposed each year, the auditor shall levy and the county treasurer shall collect the millage upon all taxable property in the county and place it in a separate interest-bearing account with the interest to accrue to the account. (Emphasis added).

In interpreting a statute, the primary purpose is to ascertain the intent of the Legislature. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The words of a statute must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. Bryant v. City of Charleston, 295 S.C. 408, 368 S.E.2d 899 (1988). The court must apply the clear and unambiguous terms of the statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991).

As to your first question, this Office cannot make a definitive statement regarding the precise number of mills needed to be levied as such would be a factual determination which is beyond the scope of a legal opinion. Op. Atty. Gen. dated December 12, 1983. However, in interpreting Act No. 577, the Act provides that in order to implement its budget, the Board of Education may impose an annual tax levy which does not exceed the "preceding year's millage" by more than four mills, excluding the required inflation factor. The General Assembly has chosen to use the words "preceding year's millage" rather than the words "preceding year's budget." This Office cannot now substitute the words "preceding year's budget" for the words "preceding year's millage." Therefore, based on the foregoing rules of statutory construction and the clear and unambiguous language of Act No. 577, it appears that the annual tax levy is tied to the preceding year's

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millage and nothing else.¹ While I reach this conclusion based on the language of the Act and the general rules of statutory interpretation, I do so with some hesitancy. It is obvious that there is great disagreement regarding the proper interpretation of the Act. Therefore, in order to reach a final resolution acceptable to all parties, it may be wise for an appropriate party to seek a declaratory judgment in this matter.

In regards to your second question, the auditor's role is limited in determining the millage for the school district. The Act grants the Board of Education the independence to determine the amount of funding needed for the schools, within the parameters set forth in the Act. The Auditor's role is limited to levying the millage upon all taxable property in the county. The Auditor does not possess any discretion in doing so, but act in a ministerial capacity only. See, County of Lee v. Stevens, 277 S.C. 421, 289 S.E.2d 155 (1982). I note, however, that it may be possible for the Auditor, in his capacity as a citizen and taxpayer of Allendale County, to seek a declaratory judgment in this matter.

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 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

¹ Of course, any final determination of actual funds needed must also include appropriate consideration of the general state law on the subject of school funding.