

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

November 22, 1991

SUBJECT: Taxation and Revenue - School tax - transfer of debt service funds to general operations.

- SYLLABI:
1. The taxes levied for payment of bonded debt service cannot be appropriated to other purposes unless and until the debt is first satisfied.
 2. There is no authority for a school district to increase a tax levy several months into a fiscal year. Any shortfall in revenue is to be made up in the next ensuing year.

TO: The Honorable Dick F. Elliott
Member, House of Representatives

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTIONS:

1. Can taxes collected to fund bonded debt service be used for purposes other than the payment of the debt service?
2. Can the tax levy be increased several months into the budget year?

APPLICABLE LAW: S.C. Const., art. X, § 7; Act 239, Acts of 1983; Act 137, Acts of 1947; and Act 406, Acts of 1951

DISCUSSION Question 1:

It has long been the opinion of this office that a tax levied for payment of bonded debt service could not be appropriated to fund other costs. (See OAG 2717, 1969, copy appended.)

It is presumed that the bonds herein were issued under the

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"School Bond Act" adopted in 1951 and now codified as Chapter 71 of Title 59 of the South Carolina Code of Laws. S.C. Code Ann. § 59-71-150 is specific on the subject. It provides in part that:

. . . there shall be levied annually by the auditor of each county wherein such operating school unit is located, and collected by the treasurer of such county in the same manner as county taxes are levied and collected, a tax, without limit, on all taxable property in such operating school unit sufficient to pay the principal and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor.
(Emphasis added)

The tax is thus levied only for the purpose of funding the bond debt. Additionally, S.C. Const. art. X, § 5 provides in 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 lawfully assembled. Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied. (1976 (59) 2217; 1977 (60) 90.)

This again necessitates that the tax levy state the purpose for which the tax was levied. It necessarily implies the application of the tax to the purpose for which the same was levied.¹

¹Act 137, Acts of 1947, provides that the diversion of the surplus funds from the bond tax levy to the general fund applies to the Horry County Schools. Such, however, is prior to the 1951 Bond Act that provides that the levy be for debt service. It further overlooks the constitutional problems that the diversion would create. For purposes of this Opinion, the 1947 Act is thus not followed.

CONCLUSION Question 1:

The taxes levied for payment of bonded debt service cannot be appropriated to other purposes unless and until the debt is first satisfied.

DISCUSSION Question 2:

Act 239, Acts of 1983, provides that:

The advisory boards of trustees, superintendents, or principals of the several schools of Horry County shall prepare a budget for the next succeeding school year and submit it to the county board of education on or before March first of each year. The county board of education shall prepare a budget based on the budgets submitted by the trustees, superintendents, or principals and shall determine the necessary millage for the operation of schools for the next succeeding school year. This budget shall be submitted to the Senator and House members of Horry County on or before June first of each year. The Senator and House members shall instruct the county auditor to levy the millage which in their discretion is necessary for school purposes on or before August first.²

Under this statute, the budget must be completed on or before August first of each year. S.C. Const. art X, § 7(b) provides that:

²Please note that no action is required by the school district or the delegation concerning the tax levy for bonded debt service. Section 59-71-150 directs the auditor to levy and the treasurer to collect. (See OAG 85-24, p. 80, copy appended.)

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 for each year. Whenever it shall happen that the ordinary expenses of a political subdivision for any year shall exceed the income of such political subdivision, the governing body of such political subdivision shall provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year. The General Assembly shall establish procedures to insure that the provisions of this section are enforced. (1976 (59) 2217; 1977 (60) 90.) (Emphasis added)

This provision does not contemplate a change in the tax levy to fund an anticipated deficit that may occur during the tax year. The deficiency is to be made up by a tax levy in the following year.

CONCLUSION Question 2:

There is no authority for a school district to increase a tax levy several months into a fiscal year. Any shortfall in revenue is to be made up in the next ensuing year.

JLAJr:wcg