

The State of South Carolina



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

June 26, 1990

The Honorable Betty S. Cox
Auditor of Laurens County
Post Office Box 907
Laurens, South Carolina 29360

Dear Ms. Cox:

Several questions have arisen about the maintenance of local effort by school districts under the Education Improvement Act. In particular, Section 12-35-1557 of the South Carolina Code of Laws (1989 Cum. Supp.) requires that a district maintain the same effort that it did the previous year, adjusted for inflation. At the request of the Honorable James E. Bryan, Jr., Senator from Laurens County, we have been asked to advise you about the following situation.

School districts 55 and 56 of Laurens County combine all of their tax money and distribute it on a per-student basis. The combined school district budgets for the year 1989-90 was \$6,039,262.00. The actual revenue collections that are projected for 1989-90 are \$6,495,886.00. There is also another \$16,000.00 to be received by the districts from another source due to an error in a tax return. We understand that these extra revenues have been spent on mostly non-recurring items. The school districts have indicated that the inflation factor, which this year is 4.9, should be multiplied times the \$6,495,866.00, resulting in a 4.5 mill increase in taxes this year. Other officials have suggested that the inflation factor should be multiplied by the amount budgeted to operate last year. Accordingly, the questions to be addressed are:

1. Under the statute, which is the proper figure to use when multiplying the inflation factor -- the actual amount budgeted for the school year or the actual amount that was collected?
2. Who has the authority to raise this -- can the school district trustees tell the auditor to raise the millage and is she required to, on their say-so, or does the delegation have to approve this?

The Honorable Betty S. Cox
Page 2
June 26, 1990

To resolve your inquiry, it is necessary to examine various constitutional and statutory provisions, as well as a local law relative to the school districts of Laurens County. In so doing, it is important to uphold the integrity of the Education Improvement Act, which was designed to ensure no reductions of funds for education purposes from year to year, further ensuring stability and certainty in such funding. The paramount importance of continuing educational improvements and the funding therefor cannot be overlooked. For these reasons and due to the unique statute relative to Laurens County, today's opinion is deemed applicable only to Laurens County and is not intended to have state-wide applicability.

Article X, Section 7(b) of the State Constitution provides in part that "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." Similarly, section 2 of Act No. 241, 1983 Acts and Joint Resolutions, directs the boards of trustees of Laurens County School Districts 55 and 56 to prepare operating budgets annually and recommend to the county auditor the amount of tax levy necessary to defray the cost of the budgets.

In so doing, the school district boards of trustees must keep in mind the requirements of Section 12-35-1557 of the Code which provides in relevant part that

school district boards of trustees or other governing bodies of school districts shall maintain at least the level of financial effort per pupil for noncapital programs as in the prior year adjusted for an inflation factor estimated by the Division of Research and Statistical Services. The county auditor shall establish a millage rate so that the level of financial effort per pupil for noncapital programs adjusted for an inflation factor estimated by the Division of Research and Statistical Services is maintained as a minimum effort

Following the mandates of this statute, a millage rate was established in Laurens County to produce the revenue estimated to be needed by the school districts. The actual collection of taxes at this millage rate produced more revenue than was budgeted; we understand that the school districts have apparently spent the surplus on mostly non-recurring items. These facts provide the context by which the first question is to be analyzed.

Clearly, the plain language of Section 12-35-1557 would require, at the very least, that the budgeted amount for 1989-90, or

The Honorable Betty S. Cox
Page 3
June 26, 1990

\$6,039,262.00, be utilized as the figure by which the inflation factor be multiplied, to maintain the level of financial effort as the statute requires. 1/ Such calculations would ensure at least that the funding would not be reduced from the previous year's effort, as mandated. The difficulty lies in deciding how to treat the surplus of funds collected over those funds budgeted.

A review of Section 12-35-1557 shows that the General Assembly anticipated situations in which a school district might not be able to maintain a previous year's funding, so that a waiver from the requirements of Section 12-35-1557 might be sought from the State Board of Education; examples would be a mid-year revenue shortfall, loss of revenue due to a reduction in assessed valuation of property, and so forth. The statute does not address situations in which the previous year's millage levy actually resulted in more revenue collected than was budgeted. 2/

To give meaning to the requirements of both Section 12-35-1557 and Act No. 241 of 1983, and in the absence of clear legislative guidance, this Office would suggest using last year's budget (upon which the millage was based) as this year's financial effort, by which the inflation factor is to be multiplied, to comply with the Education Improvement Act. Then, to levy millage of an amount greater than that required by Section 12-35-1557, resort could be made to Act No. 241 of 1983, which provides in relevant part:

Subsequent to June 30, 1968, the boards of trustees of School Districts Fifty-five and Fifty-six may recommend a tax levy increase of up to three mills in any two-year period. A tax increase of more than three mills in any two year period must be approved at a referendum by the people of both school districts prior to its levy The boards shall order the referendum to be held

1/ For purposes of this opinion, it is assumed that the figure of \$6,039,262.00 represents the financial effort per pupil for non-capital programs. If such is not the case, the figure should be reduced accordingly to reflect the local effort for non-capital programs, as Section 12-35-1557 requires.

2/ It is presumed that taxes are levied to defray governmental expenses rather than to build up the taxing entity's treasury at the public's expense. Some authorities cited in 16 McQuillin, Municipal Corporations, § 44.25 would suggest that a cash surplus should be taken into account when setting the next year's millage.

The Honorable Betty S. Cox
Page 4
June 26, 1990

not later than the fourth Tuesday in May. If the recommended levy is within the limits provided, the county auditor shall levy and the treasurer collect the amount specified. 3/

Such interpretation would give continued effect to Section 12-35-1557, a statute of state-wide uniformity and applicability, while also recognizing the presumed and continuing validity of the local law. See Op. Atty. Gen. dated August 5, 1986.

In response to the first question presented, Section 12-35-1557 would require that last year's budgeted amount (the amount used to determine last year's millage) be used as the figure by which this year's inflation factor be multiplied. If the boards of trustees desire to use a higher figure (i.e., the amount of taxes actually collected) to multiply by the inflation factor to determine the millage rate, then the local act for Laurens County could be utilized to calculate the new millage rate, if the requirements of the act are met.

The answer to the second question depends in part on which legislative enactment is followed to ascertain millage. If reliance is had on Section 12-35-1557 to set millage, the county auditor is directed to levy a millage which will permit the mandates of that statute to be followed, even if such would result in imposition of a level of millage greater than would have been permitted under Act No. 241 of 1983. (This advice comports with advice given by Chief Deputy Attorney General Joe L. Allen, Jr. in a letter to you dated February 27, 1990.) If a millage levy is desired above that required by Section 12-35-1557, the auditor would be directed by the school districts' boards of trustees' recommendation as to the millage levy, to the extent such would comply with Act No. 241 of 1983. No statutory authority appears to give the Laurens County Legislative Delegation any authorization to direct the auditor to levy a particular millage.

In reaching these conclusions, we are mindful of the need to interpret various provisions of the Education Improvement Act uniformly and to continue to effectuate the purposes of the Act. For these reasons, today's opinion is, as noted previously, limited to the unique circumstance existing in Laurens County. Due to the lack of legislative guidance on how a surplus of taxes collected should be treated, it might be prudent to seek legislative clarification of Section 12-35-1557.

3/ This Office does not know whether the ceiling of "three mills in a two year period" may have already been reached, thus necessitating a referendum.

The Honorable Betty S. Cox
Page 5
June 26, 1990

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions