

# The State of South Carolina



## Office of the Attorney General

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June 22, 1990

The Honorable George H. Bailey  
Member, House of Representatives  
308-C Blatt Building  
Columbia, SC 29211

Dear Representative Bailey:

You have requested the Opinion of this Office as to whether the Dorchester County Council or the Dorchester County Auditor approves the school tax millage for School Districts 2 and 4 in Dorchester County. You referenced Act 267, Acts and Joint Resolutions of South Carolina, 1987, and section 12-35-1557 of the Code of Laws of South Carolina, 1976, as amended which provide in part as follows:

Act 267....the [Dorchester County Council], after approving the budgets [of the Boards of Trustees of the School Districts], shall set the necessary tax millage. The Council may not assign or delegate its authority under this Act to any other entity....

Section 2. For the school year 1987-88, the revenue requirements of the Education Finance Act and the Education Improvement Act must be met....

[Sections 3 and 4]. ...for each school year after 1987-88, the tax millage for the annual operating budget for Dorchester County School District No. 4 [and No. 2] set by the Dorchester County Council may not increase more than 4 mills beyond the revenue requirements of the Education Finance Act and the Education Improvement Act....

Section 12-35-1557. Except as provided in this section, School District Boards of Trustees or any other appropriate governing body of a school district shall maintain at least the level of per-pupil financial effort established as provided in fiscal year 1983-84. Beginning in fiscal year 1985-86, local financial effort for non-capital programs must be adjusted for an inflation factor estimated by the Division of Research and Statistical Services.

Thereafter, school district boards of trustees or other governing bodies of school districts shall maintain at least the level of financial effort per pupil for non-capital 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 non-capital programs adjusted for an inflation factor estimated by the Division...is maintained as a minimum effort....  
(emphasis added)

A previous Opinion of this Office concluded that, in section 12-35-1557, the Legislature had provided a controlling means for setting the millage to fund a minimum local effort required therein as provided in an approved school budget. 1986 Ops. Atty. Gen. Opinion Number 86-87. The Opinion concluded that section 12-35-1557 was intended only to set the millage rate necessary to fund the minimum local effort required therein and would have no effect on the authority to levy millage for other portions of the school district's budget. Another Opinion of that same year concluded that section 12-35-1557 continued to be applicable to Florence School District No. 1 despite a subsequently passed local law. Ops. Atty. Gen. (August 5, 1986) The Opinion noted that "it is not at all clear that the two statutes are in actual conflict", but assuming that such a conflict existed, the Opinion concluded that the General Assembly had not intended to create an exception for one school district in the State as to the Education Improvement Act (EIA) requirement that a school district maintain its previous level of funding.

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Here, Act 267 and section 12-35-1557 should be construed with reference to the general rule that two statutes on the same subject should be reconciled, if possible, so as to give effect to both. See Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970); Sutherland Statutory Construction, Vol. 2A § 51.02; Ops. Atty. Gen. August 5, 1986. The statutes should also be read so as to ascertain the legislative intent behind them. South Carolina Department of Highways and Public Transportation v. Dickinson, 341 S.E.2d 134 (SC 1986).

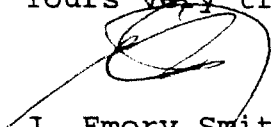
The legislative intent indicated in Act 267 is that revenue and millage requirements of the Education Finance Act and the Education Improvement Act must be met. That intent is made express as to the school year 1987-88 and is indicated for subsequent school years in which the budget is described in terms of not increasing more than "...4 mills beyond the revenue requirements of the Education Finance Act and the EIA." (emphasis added) The only possible conflict between these two laws is that County Council is directed to set the necessary tax millage in Act 267 whereas the County Auditor sets it for the EIA requirements in section 12-35-1557. At a glance, the two statutes could be reconciled by the Auditor's setting the millage for the EIA millage and Council setting the millage for any revenue requirements above the EIA millage within the 4 mill constraints of Act 267 Ops. Atty. Gen. (August 5, 1986); however, if Council set the millage at a level equal to or in excess of the EIA millage requirements, no action by the County Auditor would be necessary as Council clearly has authority under Act 267 to set the millage. Moreover, because Council approves the budget under Act 267, the Auditor would not have a budget upon which to base millage absent Council approval. See Ops. Atty. Gen. (May 6, 1986). Therefore, the approach most consistent with the two laws is for Council to set the millage under Act 267.

In conclusion, Act 267 of 1987 appears to be consistent with section 12-35-1557 in making clear that the Dorchester County School Districts 2 and 4 must have tax millage sufficient to meet the EIA revenue requirements of section 12-35-1557. Under Act 267, County Council has the duty to set that EIA millage and has the authority to set millage in excess of EIA requirements within the constraints of Act 267.

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If you need any additional information, please let me know.

Yours very truly,

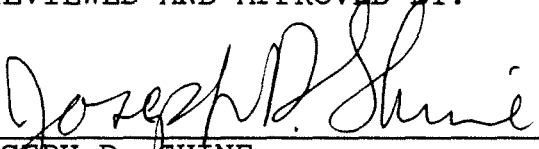


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cc: The Honorable George H. Bailey  
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REVIEWED AND APPROVED BY:



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