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# The State of South Carolina



## Office of the Attorney General

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July 15, 1991

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Attorneys at Law  
118 East Richards Avenue  
Post Office Box 430  
Summerville, SC 29484

Dear John:

As Dorchester County attorney, you have requested the opinion of this Office for the Dorchester County Council concerning the local effort requirements for Dorchester County School District Two (2). According to the information you have provided, District Two has a budget surplus from Fiscal Year 1990-91. Your questions appear to raise two issues: Whether the amount of the surplus from 1990-91 is to be included in the calculation of the local effort amount required to be maintained in 1991-92 by District Two under S.C. Code Ann. § 59-21-1030 (Supp. 1990) [formerly § 12-35-1557] and whether this surplus amount may actually be used or expended to satisfy whatever local effort requirement exists for 1991-92?

We have previously declined to issue an opinion as to the application of this statute to budget surpluses in Dorchester County because litigation was pending on this issue as to the Laurens County School districts and this Office ordinarily does not issue opinions on matters pending judicially. Ops. Atty. Gen. (September 21, 1990); Laurens County School Districts 55 and 56 v. Betty S. Cox, etc., (C/A No. 90-CP-30-396). For your information I am enclosing a copy of the September 21, 1990, letter from this Office, a June 26, 1990, opinion cited therein pertaining to the Laurens County local effort and the Order of the Honorable T.L. Hughston, Jr., in the Laurens County case. I understand that Judge Hughston's decision has been appealed to the Supreme Court.

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Because the issues addressed in the Laurens County opinion and Order are still in litigation, we continue to decline to issue an opinion as to Dorchester County school districts as to those issues; however, as noted in the September 21, 1990 letter, nothing in the legislation for the Dorchester County school districts would appear to make the Laurens County local effort opinion (June 26, 1990) inapplicable to those districts.

The outcome of the Laurens County issues currently in litigation also should affect the question of whether surplus money can actually be used or expended toward satisfying the local effort requirement absent a waiver requested under § 59-21-1030. Therefore, as a safeguard because of the uncertain outcome of this litigation, a waiver could be requested from the State Board of Education pursuant to § 59-21-1030 to permit the use of this surplus to satisfy the local effort requirement for 1991-92. Certainly, this surplus may be expended for such a purpose. Ops. Atty. Gen. No. 78-52 (March 17, 1978). The waiver would only serve to ensure that money was counted toward the local effort requirements.

In conclusion, many of the issues related to your question are pending in litigation and therefore cannot be addressed by an opinion of this Office; however, the surplus money can be expended for a purpose such as meeting the local effort requirements, and the additional safeguard of obtaining a waiver would ensure that, given the uncertainties of litigation, the money is counted toward the local effort requirement.

Yours very truly,



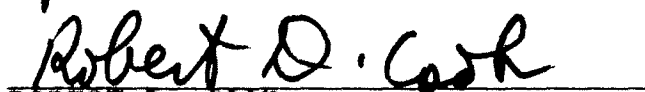
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