The State of South Carolina

Office of the Attorney General

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May 8, 1991

The Honorable D.N. Holt, Jr., Chairman
Joint Legislative Delegation,
Charleston County
2 Courthouse Square, Room 307
Charleston, SC 29401

Dear Representative Holt:

You have requested the Opinion of this Office as to whether the Charleston County Legislative Delegation may approve a budget for the Charleston County School District in excess of 90 mills without introducing legislation in the General Assembly. The current statutory provision is set forth as follows in Act No. 340 § 10, 1967 S.C. Acts 470 as amended by Act No. 1602 § 11, 1972 S.C. Acts 3131:

> The Board of Trustees of the Charleston School District shall prepare and submit to the Charleston County Legislative Delegation, as information, on or before the fifteenth day of August of each year beginning in 1968 a proposed budget for the ensuing school year. In order to obtain funds for school purposes the Board is authorized to impose an annual tax levy, commencing in 1968, not to exceed ninety mills, exclusive of any millage imposed for bond debt service. In the event the Board determines that the annual tax levy should

> exceed ninety mills, the Board shall hold a public hearing on the question at least two weeks prior to submitting such request to the legislative delegation....Upon certification by the Board to the county auditor of the tax levy to be imposed the auditor shall levy and the county treasurer shall collect the millage so certified upon all taxable property in the district.

A previous Opinion of this Office construed this provision as giving the Board of Trustees of the Charleston County School District (Board) "fiscal independence" to prepare its own budget and impose an annual tax levy not to exceed 90 mills. Ops. Atty. Gen. April 9, 1975. Although a subsequent Opinion, at a glance, seems to indicate that the legislation delegation has the power to approve school budgets in Charleston County, a closer reading of that Opinion indicates that the role of the legislative delegation is merely stated in the form of a question posed for the purposes of determining the effect of "home rule" legislation upon Charleston County School District matters. Ops. Atty. Gen. October 25, 1979. Therefore, the conclusion of the 1975 Opinion about the "fiscal independence" of the school district is still controlling.

Neither the Board nor the delegation appear to have the authority to raise the millage above the 90 mills level, exclusive of bond debt service. That the fiscal independence of the school district has been determined to exist for millage "not to exceed 90 mills", indicates that the Board has no authority, by its own action, to raise the millage above 90 mills, even after the holding of a public hearing. 1/ The only involvement of the delegation within the 90 mills limitation is that the Board is directed to submit its proposed budget to the delegation "as information."

1/ Each part or section of a statute "...should be construed in connection with every other part or section so as to produce a harmonious whole." Sutherland Statutory Construction Vol. 2A § 46.05.

Although, if the Board determines that the tax millage should be increased above 90 mills, it is directed to "...hold a public hearing on the question at least two weeks prior to submitting such request to the legislation delegation", no language in the legislation indicates that the delegation has the authority to approve the increase. If the above legislation were interpreted to give the delegation the authority to approve the increase in millage, such approval would be constitutionally suspect as violation of separation of powers under previous Opinions of this Office and the South Carolina Supreme Court decision in Aiken County Board of Education v. Knotts, 262 S.E.2d 14, 274 S.C. 144 (1980); Ops. Atty. Gen. December 7, 1987 and May 16, 1983. Because legislative provisions are, when possible, to be construed in a manner to render them consistent with the Constitution (State v. Seigler, 230 S.C. 115, 94 S.E.2d 231 (1956), see also Sutherland Statutory Construction, Vol. 2A § 45.11)), and because of the absence of language clearly authorizing the delegation to lift the ceiling, the Opinion of this Office is that the 1972 legislation does not permit the delegation, itself, to increase the millage above 90 mills.

Although neither the delegation nor the school district have the authority to raise the millage above the ceiling, the legislation indicates a legislative intent 2/ that some public body have the authority to do so in its reference to holding a hearing as to such a proposal. Because the legislature fixed the ceiling at 90 mills, that body appears to have the authority to raise that ceiling. See Ops. Atty. Gen. June 19, 1984; see also S.C. Code Ann. § 4-9-70. 3/ This conclusion is also supported by the reference to the Board's submitting the "request" to the delegation after the hearing.

2/ "The...primary function in interpreting a statute is to ascertain the intent of the legislature." S.C. Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E.2d 134 (1986).

3/ Section 4-9-70 provides, in part, that "...where the General Assembly retains the authority to establish or limit the millage levied by school districts...on January 1, 1974, such authority shall continue in the General Assembly until such time as such authority may be transferred to the school district or the county governing body by Act of the General Assembly."

In conclusion, only the General Assembly appears to have the authority to raise the 90 mill ceiling on tax levies for the Charleston County School District, exclusive of millage for bond debt service. The legislative delegation has no authority to approve such an increase itself.

If you have any questions, please let me know.

Yours very truly,

Patricia D Petway

Patricia D. Petway
Assistant Attorney General

JESjr/jps

cc: The Honorable Glenn F. McConnell

REVIEWED AND APPROVED BY:

Robert D. Cook

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