

The State of South Carolina



Office of the Attorney General

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April 1, 1991

The Honorable Warren K. Giese
Senator, District No. 22
P. O. Box 142
Gressette Senate Office Building
Columbia, South Carolina 29202

Dear Senator Giese:

You have requested the Opinion of this Office as to whether the Richland County Council 1/ has the authority to approve a budget for Richland County School District Two in a manner which would, in effect, be at an amount "not to exceed" a specific dollar limit. The example that you have provided, in an accompanying letter from the Honorable John D. Monroe, Member, Richland County Council, is as follows:

"...[an amount] not to exceed \$24,000,000.00 provided those funds are collected from the present operating millage, from inventory tax, and any escrow dollars left over from the previous fiscal year."

This Office has also received a related request from Councilman Monroe.

Ordinarily, this Office does not issue Opinions to individual members of a county council or to other public officials making a request on behalf of those council members, but this Office will,

1/ Under Act No. 280, 1979 S.C. Acts 975, the school tax levy for Richland County School District Two is determined by the Richland County Council.

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when appropriate, issue Opinions at the request of the majority of the membership of a county council; however, at your request, we are responding to your inquiry in that we have already received letters from both you and Council Member Monroe, and you had not been previously aware of this policy of the Office.

My understanding from information provided by School District Two is that the budget is adopted in June and taxes are actually levied in October. Therefore, if the budget is set at "not to exceed \$24,000,000.00" in June, and revenue were lower than \$24,000,000.00, then the school district might have to cut its budget to avoid a deficit. If revenue were not lower, the school district could maintain a budget of up to \$24,000,000.00. According to the information provided this Office, this proposal would avoid an increase in tax millage in October that might occur if the budget were set at exactly \$24,000,000.00 in June and revenue came in lower than that figure.

The Constitution directs 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." (Art. X § 7). By the plain language of the Constitution and related statutes, school districts must adopt an annual budget that balances estimated revenues with estimated expenditures. Ops. Atty. Gen. March 12, 1990. The question here is whether the budget can be approved for an amount "not to exceed" rather than for an exact amount.

Although "[c]ertainty in the amount appropriated is generally essential to a valid appropriation of public monies...", cases have upheld appropriations bills which have fixed the limit upon which the treasury will be drawn. 63(a) Am.Jur.2d Public Funds § 42; Eide v. Frohmler, 70 Ariz. 128, 216 P.2d 726 (1950); Riley v. Johnson, 219 Cal. 513, 27 P.2d 760 (1933). As stated in Riley, "[a]ll that is necessary is that the legislature fix in the appropriations bill the extent to which the treasury will be drawn upon."

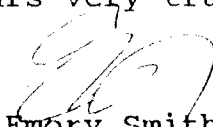
The proposed action by the county council is very similar to that approved in Riley and Eide, supra. Although I cannot assure that a South Carolina court would rule in the same manner, this authority indicates that a court would rule that the Richland County Council has the authority to approve a budget "not to exceed \$24,000,000.00" because that budget sets an upper limit on the amount of money to be drawn from public funds. We emphasize also that this letter concludes only that such a budget might be upheld by the courts of this State and that we do not address the policy questions of whether such a budget should be adopted. Such policy questions would be for the appropriate local authorities to determine under Act 280. See Note 1/.

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If you have any questions, please let me know.

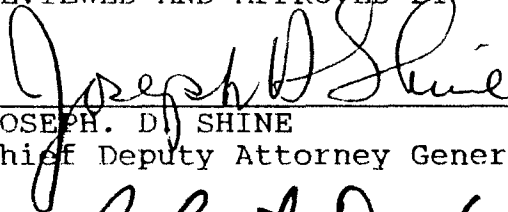
Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

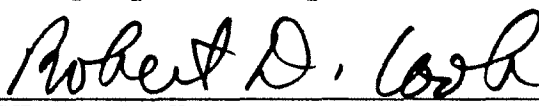
JESjr/jps

cc: The Honorable John D. Monroe

REVIEWED AND APPROVED BY



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