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THE STATE OF SOUTH CAROLINA

OFFICE OF THE ATTORNEY GENERAL

COLUMBIA

OPINION NO. ____________

July 29, 1992

SUBJECT: Taxation and Revenue - Duties To Levy Sufficient Millage To Cover Obligations For School Bonds Issued By The Greenville County School District.

SYLLABI: 1. In the absence of any basis to the contrary disputing the school district's representation, Section 59-71-80 (1990), grants the school district authority to call bonds for redemption prior to maturity.

2. The auditor must calculate a bond millage for the next ensuing year based on the existing balance in the sinking fund after payment of past and current obligations. If that balance is insufficient to meet both the next ensuing year's obligations (either from maturing bonds or early redemption of bonds) and the interest payment requirements, the auditor must levy a tax sufficient to meet those demands.

TO: The Honorable Mary Jane McCarter
Greenville County Auditor

FROM: Ray N. Stevens RNS
Chief Deputy Attorney General

QUESTIONS:

1. Does the school district have the right to call bonds for redemption before maturity of the bonds?

2. What responsibility does the auditor have to levy the millage to cover the funds needed to accomplish the redemption?

APPLICABLE LAW: S.C. Code Ann. Sections 59-71-80 and 59-71-150 (1990).

DISCUSSION Question 1:

1. Right Of School District To Call Bonds Before Maturity.

Under S.C. Code Ann. Section 59-71-80 (1990), a school district may issue bonds that are subject to redemption prior to the stated maturity so long as the bonds have a clear statement that the bonds may be redeemable before maturity. Based on the material you provided to our office, the school district represents that the bonds maturing after February 1, 1992, (i.e. 1993, 1994, 1995 and 1996) are subject to redemption "in whole or in part . . ." at par plus accrued interest, plus a redemption premium of 3% of the principal amount of the bonds to be redeemed.

CONCLUSION Question 1: In the absence of any basis to the contrary disputing the school district's representation, Section 59-71-80 (1990) grants the school district authority to call bonds for redemption prior to maturity.

DISCUSSION Question 2:

2. Duty To Levy Bond Millage Sufficient To Pay For The Redemption.

You have also asked about your duty to levy a sufficient bond millage to pay for the redemption. Under S.C. Code Ann. Section 59-71-150 (1990), the auditor is required to establish the bond levy on an annual basis. That annual levy must be a tax sufficient to pay the principal and interest of the school bonds as they respectively mature and to create a sinking fund as may be necessary to accomplish this duty. The sinking fund is a fund ". . . instituted and invested in such a manner that its gradual accumulations will enable [the school district] to meet and wipe out a debt at [the] maturity [of the debt.]" 64 Am. Jur. 2d, Public Securities and Obligations, Section 5.

Under S. C. Code Ann. Section 59-71-150, the auditor has the duty to ensure that the sinking fund is sufficient to satisfy the principal on the bonds that will become due (either by way of maturity or redemption) during the next ensuing year and to ensure the sinking fund is sufficient to pay the interest due to the bondholders for the next ensuing year. If the sinking fund is sufficient to satisfy this duty, "[t]he sinking fund should be used for that purpose and the next tax levy made when the amount in the fund would be insufficient to make similar payments." 1979 OAG No. 79-95. The calculation of the amount of the levy must consider the existing balance in the sinking fund after payment of past and current obligations. 1986 OAG No. 86-89.

CONCLUSION Question 2:

In summary, the auditor must calculate a bond millage for the next ensuing year based on the existing balance in the sinking fund after payment of past and current obligations. If that balance is insufficient to meet both the next ensuing year's obligations (either from maturing bonds or early redemption of bonds) and the interest payment requirements, the auditor must levy a tax sufficient to meet those demands.

RNS/jws