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Office of the Attorney General

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September 21, 1990

The Honorable Michael T. Rose  
Senator, District No. 38  
314 Chessington Circle  
Summerville, SC 29485

Dear Senator Rose:

You have requested the Opinion of this Office as to questions regarding establishment of school tax millage for the Dorchester County School Districts. The questions are separately addressed below.

The first of your questions relates to whether S.C. CODE ANN. § 12-35-1557 (1989 Cum. Supp.) requires local officials to maintain the actual revenue raised in a previous school year, adjusted for an inflation factor, even though the revenue raised in that previous school year is in excess of anticipated revenue. Enclosed, for your information, is a copy of a previous Opinion of this Office as to the Laurens County School Districts Ops. Atty. Gen. (June 26, 1990) which your letter indicates that you have read. Although that Opinion was confined to the Laurens County School Districts, nothing in the legislation for the Dorchester School Districts would appear to make that Opinion inapplicable to those districts.

Other than the guidance provided by that Opinion and the June 22, 1990 Opinion of this Office concerning Dorchester school tax millage which was also referenced by you, we respectfully decline to issue an additional Opinion now on the effect of section 12-35-1557 because litigation is pending on this issue as to the Laurens County School Districts and this Office ordinarily does not issue Opinions on matters pending judicially. Laurens County School Districts 55 and 56 v. Betty S. Cox, etc. (C/A No. 90-CP-30-396). Because this case may, by implication, affect the various methods of dealing with "excess" revenue situations, we do not address

THE HONORABLE MICHAEL T. ROSE

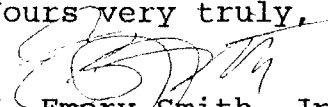
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those methods herein except as noted below. 1/ For your information, a copy of the Order of the Honorable T. L. Hughston, Jr., dated September 7, 1990, is enclosed. Our understanding is that the Order is currently under appeal.

In addition, you have asked whether legislation could be passed which would give the Dorchester County Council, in effect, a line-item veto over individual items in the budgets of Dorchester School Districts 2 and 4. Judicial consideration of the existence of line-item veto power appears to have arisen primarily in the context of constitutional provisions giving governors that authority such as the authority of our own Governor under art. IV § 21, South Carolina Constitution (63 Am.Jur.2d Public Funds § 43); however, no authority appears to prohibit the legislature from passing a statute expressly giving Dorchester County Council such authority as to the budgets of the school districts in that county. See art. XI § 3, South Carolina Constitution ("The General Assembly shall provide for the maintenance and support of a system of free public schools"); Richland County v. Campbell, 364 S.E.2d 470 (S.C. 1988) (Legislature free to choose means of funding the schools).

If you need additional information, please let me know.

Yours very truly,



J. Emory Smith, Jr.

Assistant Attorney General

(Signatures Continued on Next Page)

JESjr/jps  
Enclosures

1/ For your information, I am enclosing a copy of a previous Opinion of this Office which stated that school districts and other subdivisions should not include a tax levy or an appropriation for a contingency or reserve fund. Ops. Atty. Gen. (March 12, 1990). Such an Opinion potentially could apply to an effort to "escrow", in advance, revenue in excess of estimated expenses in the event that the escrowed money constituted a contingency fund or a reserve fund for unbudgeted items.

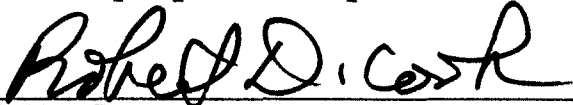
As to crediting unexpended school district money to the county's general fund, I refer you to section 59-69-250 of the Code which provides generally for the crediting of such sums to the school districts. A previous Opinion of this Office casts some doubt as to whether legislative provisions could be made for transferring school district tax money to a county. Ops. Atty. Gen. (March 6, 1979).

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REVIEWED AND APPROVED BY:



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