

The State of South Carolina



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August 5, 1986

The Honorable Thomas E. Smith, Jr.
Member, South Carolina State Senate
P. O. Box 308
Pamplico, South Carolina 29583

Dear Senator Smith:

You have requested the advice of this Office as to whether, under the Education Improvement Act (EIA), school districts must increase the local financial effort per pupil for noncapital programs (local effort) regardless of the growth in local revenue per mill and, if necessary, increase the tax millage regardless of the school districts' fiscal independence. The particular provisions with which you are concerned were added by the EIA and have been amended by both the 1985-86 and 1986-87 Appropriations Act. Section 12-35-1557 as amended by Act 540 Part II, Section 12, Acts and Joint Resolutions of South Carolina, 1986. These provisions now read as follows:

"...School district Boards of Trustees or other governing bodies of school districts shall maintain at least the level of financial effort per pupil for noncapital programs as in the prior year adjusted for an inflation factor estimated by the Division of Research and Statistics. The County Auditor shall establish a millage rate so that the level of financial effort per pupil for noncapital programs adjusted for an inflation factor estimated by the Division of Research and Statistics is maintained as a minimum effort. No school district which has not complied with this section shall receive funds hereunder..."

A previous opinion of this Office has concluded that no exception appears to exist to these local funding requirements in the absence of a waiver by the State Board of Education under §12-35-1557 or a reduction in State Education Finance Act (EFA) funding in which case a proportionate reduction in local EFA funding may be made. Ops. Atty. Gen. (April 28, 1986). Therefore, the local effort must be maintained and increased as provided regardless of the growth of local revenue unless a waiver is granted or a reduction is made in EFA funding. That the conditions for the granting of a waiver by the State Board include loss in revenue or insignificant growth in revenue provides further indication that

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these circumstances do not limit the local effort requirements absent a waiver. Sutherland Statutory Construction, Vol. 2A §46.05.

Because the local effort must be maintained regardless of the growth in revenue, tax millage would necessarily have to be increased if local revenue were otherwise insufficient. This conclusion also appears to be required by a plain reading of language directing the County Auditor to establish a millage rate that is adequate to fund the local effort. South Carolina Department of Highways and Public Transportation v. Dickerson, (South Carolina Supreme Court; Opinion No. 22483, February 26, 1983).

Of course, the increase in millage must be accomplished by authorized means, and you have raised the question of whether the duty to increase millage is affected by a school district's fiscal independence. As you know, the provisions for raising school tax millage in each of the school districts varies from district to district in accordance with general law and/or special statutory provisions for these districts. See e.g. §4-9-70 of the Code of Laws of South Carolina, 1976 and Ops. Atty. Gen. (November 6, 1985 and June 19, 1984). Some provisions include ceilings on millage that cannot be lifted except by action of the legislature. See §4-9-70 and Ops. Atty. Gen. (June 19, 1984). Therefore, the question is whether §12-35-1557 provides a means as well as a duty to raise millage, if necessary, which limits the various provisions for taxation for individual districts.

The millage provisions of §12-35-1557 are set forth as follows:

"The County Auditor shall establish a millage rate so that the level of financial effort per pupil adjusted for an inflation factor...is maintained as a minimum effort." 1/

This provision has previously been interpreted to provide for the Auditor's determination of the millage needed to produce sufficient revenue for the local effort upon the receipt of a school district's budgeted provisions for the local effort. Ops. Atty. Gen. (May 6, 1986). The districts were found to have the duty to determine the amount of revenue needed for the local effort as a necessary part of

1/ This Office has previously found that the original version of the EIA contained no means for increasing local millage (Ops. Atty. Gen. (June 19, 1984); see also Ops. Atty. Gen. (April 21, 1986; however, the provision quoted above was added to §12-35-1557 subsequently by the 1985 Appropriations Act; Act 201, Part II, Section 61, 1985.

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their annual budgets. Id.

This opinion did not address the question of whether an Auditor would have the authority under §12-35-1557 to set the millage for the budgeted local effort which would exceed limitations that might otherwise exist on the establishment of tax millage for that school district. The key rule of statutory construction applicable to this question of the relationship of §12-35-1557 to other taxation provisions is that statutes pertaining to the same subject matter should be construed together and reconciled, if possible so as to render both operative. Lewis v. Gaddy, 254 SC 66, 173 S.E.2d 376 (1970).

To render §12-35-1557 operative, it must be construed to be controlling as to local legislation with respect to the setting of millage for the local effort. If this provision did not have controlling effect with respect to local limitations on the setting of millage, it would be of questionable effect in that it would provide for no means of levying taxes to meet the local effort. Because the legislature is presumed not to pass legislation having no operative result, such a construction of the statute does not appear to have been intended. Sutherland Statutory Construction, Vol. 2A, §45.12. Moreover, to construe the millage provision of §12-35-1557 as not being controlling would be inconsistent with the duty imposed on districts to increase the local effort. ^{2/} Instead, the millage provision of §12-35-1557 indicates a legislative intent to provide a means for districts to ensure

^{2/} An argument can be made that this provision was not intended to override existing limitations on raising tax millage because the penalty provisions of §12-35-1557 would be unnecessary if the raising of tax millage is controlled by that statute; however, because the increase in millage can be initiated only under the authority of a corresponding school district budget (Ops. Atty. Gen. (May 6, 1986)), the penalty provisions could be applicable upon the failure of the school district to adopt a budget providing for the appropriate local effort. The argument can also be made that these millage provisions were not intended to override any existing local limitations on millage because the waivers under the statute may be granted because of a district's lack of revenue growth or loss of revenue; however, application must be made for a waiver and a waiver cannot be renewed unless a school district meets the minimum effort requirement of the previous year and at least the minimum effort required under the Education Finance Act. Therefore, the penalty and waiver provisions of §12-35-1557 can still be given effect even though that statute's provisions for raising local millage are controlling with respect to local legislation concerning millage.

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that they can raise the millage to meet their local effort requirements. See Spartanburg Sanitary Sewer District v. City of Spartanburg, 321 S.E.2d 258 (SC 1984).

This construction of §12-35-1557 does not leave local tax laws inoperative. Existing means and limitations for levying taxes would remain controlling otherwise. Section 12-35-1557 appears to have been intended only to set the millage rate necessary to fund the minimum local effort required therein and would have no effect on the authority to levy millage for other portions of a school district's budget.

Because of the numerous and varied local provisions for taxation, this opinion does not attempt to address how each of them would be affected by the operation of §12-35-1557. The legislature may wish to consider legislation clarifying the effect of §12-35-1557 on these local laws.

In conclusion, school districts must increase their local funding effort in accordance with the EIA regardless of the growth in revenue per mill. The legislature has provided in the EIA a controlling means for setting the millage to fund this effort as provided in an approved school budget.

If you have any questions or need additional information, please let me know.

Yours very truly,



J. Emory Smith, Jr.
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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