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Office of the Attorney General

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March 18, 1986

Mr. Donald L. Coffin
Beaufort County School District
Drawer 309
Beaufort, South Carolina 29901-0309

Dear Mr. Coffin:

You have requested advice as to whether Beaufort County Council has the authority to approve the budget for the Beaufort County School District. In particular, you have asked whether Council must levy the millage necessary to fund any budget approved by the school district.

Normally, the public body that sets millage has the authority to weigh potential revenue sources and expenditures in determining the millage level to be set. Ops. Atty. Gen. (November 6, 1985); see also, Ops. Atty. Gen., No. 78-52. The opinion provided to this Office by the Beaufort County attorney states that the authority for the Beaufort County Council to levy millage is based in part upon §4-9-70 of the Code of Laws of South Carolina, 1976. This provision of the home rule law has previously been interpreted by this Office to give county councils some discretion in setting millage. 1978 Ops. Atty. Gen., No. 78-52. If acting under the authority of §4-9-70, the Beaufort County Council would appear to have the discretion to review the school budget and approve a millage level that Council considers reasonable. Such discretion may be subject to existing county ordinances or to other provisions of State law, but such issues need not be decided now; however, as noted below, the precise legal authority of County Council over school tax millage cannot be easily determined because of conflicting local legislation.

You questioned whether the repeal of Act 1736, Acts and Joint Resolutions of South Carolina, 1972 by Act 575 of 1984 had the effect of repealing County Council's authority to levy tax millage. Act 1736 had directed the Beaufort County Board of Education and County Superintendent of Education to expend those funds authorized to them by County Council as specified in "line items" of the county

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budget. Act 1736 does not make clear whether it addressed the entirety of the school budget as approved by County Council or whether it was merely referring to line items coming from county funds rather than school funds. In either circumstance, the repeal of Act 1736 does not appear to grant the school board any authority to determine its own millage because no other statutory provision appears to give the County Board of Education that authority; however, the ambiguity created by Act 1736 and its repeal is one example of a number of provisions in the local laws for Beaufort County that makes difficult the determination of which public bodies in Beaufort County have millage and budgetary authority as to school matters and the extent of that authority. See e.g. §§21-1420, 21-1421 and 21-1424 of the Code of Laws of South Carolina, 1962, Act 575 of 1984, Act 1736 of 1972, Act 994 of 1968, see also, §4-9-70.

Because of the conflicting legislation, clarification by the General Assembly of the issues that you have raised would be desirable. Of course, what millage and budgetary authority should be set forth in such legislation is a policy question that is not for this Office to decide, and my comments herein are directed only to the legal issues.

In conclusion, if acting pursuant to §4-9-70, County Council's setting the school tax millage should give Council some reasonable discretion to review and approve the school district's budget before setting the millage that Council deems necessary for the school districts; however, because of conflicting local legislation on the subject of budgetary and millage authority for the schools in Beaufort County, questions concerning these matters may be more appropriately resolved by legislative clarification.

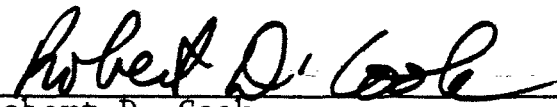
If you have any questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/srcj

REVIEWED AND APPROVED BY:


Robert D. Cook
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