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May 21, 1987

The Honorable Ronald P. Townsend
Member, House of Representatives
404D Blatt Building
Columbia, South Carolina 29211

Dear Representative Townsend:

Referencing Act No. 218 of 1981 which amended Act No. 1080 of 1966, you have asked what is meant by the phrase "fiscal year."

Act No. 218 provides that "[n]o school district in Anderson County shall increase its tax levy more than five mills for current operation, not general obligation bonds for capital improvement, in any one fiscal year without having obtained the prior approval of a majority of the qualified electors of the district in a referendum." (Emphasis added.) The phrase "fiscal year" is defined as a "period of twelve consecutive months chosen by a business as the accounting period for annual reports." Black's Law Dictionary 573 (5th Ed. 1979). We have been advised by the Anderson County Board of Education that all five school districts observe a fiscal year of July 1 of one year to June 30 of the next year. Any tax levy which would cover expenses incurred by any of the school districts during the period of July 1 of one year to June 30 of the next year would be included within the total tax levy for a particular fiscal year.

You have asked whether five mills could be levied by a school district before July 1 for use in the next fiscal year and then whether another two mills could be levied after July 1 (i.e., after the beginning of the new fiscal year) for use in that fiscal year. In the alternative, you have asked whether five mills could be levied before July 1 for use in the next fiscal year, then two more mills could be levied after July 1

The Honorable Ronald P. Townsend
Page 2
May 21, 1987

for use that year, resulting in a reduction of two mills available for increasing taxes without a referendum the next fiscal year. The latter is a sort of borrowing arrangement. The answer to both questions must be negative without the required referendum.

Article X, Section 7(b) of the State Constitution provides the following:

Each political subdivision of the State as defined in Section 14 of this article and 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. Whenever it shall happen that the ordinary expenses of a political subdivision for any year shall exceed the income of such political subdivision, the governing body of such political subdivision shall provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year. The General Assembly shall establish procedures to insure that the provisions of this section are enforced.

This constitutional provision contemplates that sufficient income will be provided on a yearly basis to meet anticipated expenses. If there should be a shortfall and income does not meet expenses, the difference is to be made up by a tax levy in the next fiscal year. Act No. 218 of 1981 appears to agree with that concept in its language which reflects an annual limit of five-mill increase without a referendum for current operations.

In your two remaining questions, a five-mill levy would have been made prior to July 1 for expenses of operation of the school district for the ensuing fiscal year. That is the limit specified by Act No. 218 of 1981. If an additional two-mill levy is made after July 1 but for use in the same fiscal year for which five mills had already been levied, seven mills would have been levied and a referendum would have been required, prior to the levy, in that case.

Even if the possible increase in taxes during the next fiscal year should be reduced by the number of excessive mills levied during or for a given fiscal year, it still remains that

The Honorable Ronald P. Townsend
Page 3
May 21, 1987

millage in excess of five would have been levied for use in the given fiscal year without a referendum. Moreover, we are not aware of any provision of law which would authorize such a "borrowing" arrangement. In either case, it would appear to be an attempt to do indirectly something which could not be done directly. The clear and unambiguous language of Act No. 218 of 1981 requires that if an increase of more than five mills should be necessary to meet the expenses "for current operation," a referendum is required. State v. Salmon, _____ S.C. _____, 306 S.E.2d 620 (1983). Such legislative intent could not be defeated by appropriating a portion of the needed revenues prior to July 1 and the remainder after the beginning of the new fiscal year.

Enclosed please find copies of Section 12-35-1557, Code of Laws of South Carolina (1986 Cum. Supp.) and an opinion of this Office dated August 5, 1986, construing the Code section. Section 12-35-1557 provides the means for raising local revenues to be certain that the minimum requirements of the Education Improvement Act are met and would, in this respect, be controlling over local laws generally.

We hope that we have satisfactorily responded to your inquiry. Please advise if we may provide clarification or additional assistance.

With kindest regards, I am

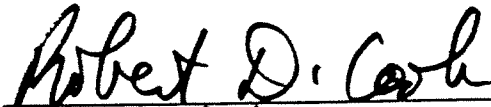
Sincerely,

Patricia D. Petway
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Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:


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