ALAN WILSON
ATTORNEY GENERAL

July 9, 2014

The Honorable Roger Le Duc
Town of Edgefield Administrator
400 Main Street
Edgefield, South Carolina 29824-1302

Dear Mr. Le Duc:

In your letter dated March 12, 2014, you seek this Office's opinion as to whether the Town of Edgefield can reinstate a property tax millage rate of 81 mills, which was adjusted from 81 to 0 mills in 2006 under the impression that it could subsequently be reintroduced. By way of background, your letter specifically states:

> [d]ue to excess revenues in 2006, the Town of Edgefield decided to eliminate their taxes by recalculating their millage from 81 to 0 mills . . . . They did this believing they could reintroduce a millage at a later date when needed.
>
> In 2008 the State law was amended according to Section 6-1-320(A) . . . which states that taxes can only be increased based on the consumer price index and percentage increase in population.

You then ask the following questions: "[i]f the Town would like to reinstitute a property tax, up to 81 mills, are they able to do so based on the amended 2008 State law? If not what can they do to re-implement a property tax?"

Based on our interpretation of the Legislature's intent in enacting S.C. Code Ann. § 6-1-320 (2011), amended by Act No. 249, 2014 S.C. Acts ___, effective June 6, 2014 (to be codified at S.C. Code Ann. § 6-1-320), as determined from the plain language of the statute, it is our opinion that the Town of Edgefield cannot reinstate its former millage rate of 81 mills. Rather, the millage rate must be calculated pursuant to S.C. Code Ann. § 6-1-320(A) unless the Town establishes the applicability of a specific exception to the cap, as provided in S.C. Code Ann. § 6-1-320(B) and Act No. 249, 2014 S.C. Acts ___.

Law/Analysis

1. S.C. Code Ann. § 6-1-320: Rules of Statutory Construction

As noted above, the statute of relevance to this opinion is S.C. Code Ann. § 6-1-320, titled "[m]illage rate increase limitation; exceptions." Generally, this provision sets a "limitation" or cap on the amount a local governing body may increase its millage rate from year to year, establishes the calculation for that cap, and provides specific exceptions when a local governing body may deviate from the cap amount. S.C. Code Ann. § 6-1-320. S.C. Code Ann. § 6-1-320 has been amended by our Legislature in

2005, 2006, 2007, 2008, 2011, and, most recently, in June of 2014. The current version of the statute that is applicable to this opinion reads as follows:

> (A)(1) Notwithstanding Section 12-37-251(E), a **local governing body** may increase the millage rate imposed for general operating purposes above the rate imposed for such purposes for the preceding tax year **only to the extent of the increase in the average of the twelve monthly consumer price indices for the most recent twelve-month period** consisting of January through December of the preceding calendar year, **plus**, beginning in 2007, **the percentage increase in the previous year in the population of the entity** as determined by the Office of Research and Statistics of the State Budget and Control Board. If the average of the twelve monthly consumer price indices experiences a negative percentage, the average is deemed to be zero. If an entity experiences a reduction in population, the percentage change in population is deemed to be zero. However, **in the year in which a reassessment program is implemented, the rollback millage, as calculated pursuant to Section 12-37-251(E), must be used in lieu of the previous year's millage rate.**
>
> (2) **There may be added to the operating millage increase allowed pursuant to item (1) of this subsection any such increase, allowed but not previously imposed, for the three property tax years preceding the year to which the current limit applies.**
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> (B) Notwithstanding the limitation upon millage rate increases contained in subsection (A), the millage rate limitation may be **suspended** and the millage rate may be increased upon a two-thirds vote of the membership of the local governing body for the following purposes:
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> (1) the deficiency of the preceding year;
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> (2) any catastrophic event outside the control of the governing body such as a natural disaster, severe weather event, act of God, or act of terrorism, fire, war, or riot;
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> (3) compliance with a court order or decree;
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> (4) taxpayer closure due to circumstances outside the control of the governing body that decreases by ten percent or more the amount of revenue payable to the taxing jurisdiction in the preceding year; or
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> (5) compliance with a regulation promulgated or statute enacted by the federal or state government after the ratification date of this section for which an appropriation or a method for obtaining an appropriation is not provided by the federal or state government.
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> (6) purchase by the local governing body of undeveloped real property or of the residential development rights in undeveloped real property near an operating United States military base which property has been identified as suitable for residential development but which residential development would constitute undesirable residential encroachment upon the United States military base as determined by the local governing body. The local governing body shall enact an ordinance authorizing such purchase and the ordinance must state the nature and extent of the potential residential encroachment, how the purchased property or development rights would

be used and specifically how and why this use would be beneficial to the United States military base, and what the impact would be to the United States military base if such purchase were not made. Millage rate increases for the purpose of such purchase must be separately stated on each tax bill and must specify the property, or the development rights to be purchased, the amount to be collected for such purchase, and the length of time that the millage rate increase will be in effect. The millage rate increase must reasonably relate to the purchase price and must be rescinded five years after it was placed in effect or when the amount specified to be collected is collected, whichever occurs first. The millage rate increase for such purchase may not be reinstated unless approved by a majority of the qualified voters of the governmental entity voting in a referendum. The cost of holding the referendum must be paid from the taxes collected due to the increased millage rate; or

(7) to purchase capital equipment and make expenditures related to the installation, operation, and purchase of the capital equipment including, but not limited to, taxes, duty, transportation, delivery, and transit insurance, in a county having a population of less than one hundred thousand persons and having at least forty thousand acres of state forest land. For purposes of this section, "capital equipment" means an article of nonexpendable, tangible, personal property, to include communication software when purchased with a computer, having a useful life of more than one year and an acquisition cost of fifty thousand dollars or more for each unit.

If a tax is levied to pay for items (1) through (5) above, then the amount of tax for each taxpayer must be listed on the tax statement as a **separate surcharge**, for each aforementioned applicable item, and not be included with a general millage increase. Each separate surcharge must have an explanation of the reason for the surcharge. The surcharge must be continued only for the years necessary to pay for the deficiency, for the catastrophic event, or for compliance with the court order or decree.

(C) The millage increase permitted by subsection (B) is in addition to the increases from the previous year permitted pursuant to subsection (A) and shall be an additional millage levy above that permitted by subsection (A). The millage limitation provisions of this section do not apply to revenues, fees, or grants not derived from ad valorem property tax millage or to the receipt or expenditures of state funds.

(D) The restriction contained in this section does not affect millage that is levied to pay bonded indebtedness or payments for real property purchased using a lease-purchase agreement or used to maintain a reserve account. Nothing in this section prohibits the use of energy-saving performance contracts as provided in Section 48-52-670.

(E) Notwithstanding any provision contained in this article, this article does not and may not be construed to amend or to repeal the rights of a legislative delegation to set or restrict school district millage, and this article does not and may not be construed to amend or to repeal any caps on school millage provided by current law or statute or limitation on the fiscal autonomy of a school district that are more restrictive than the limit provided pursuant to subsection (A) of this section.

(F) The restriction contained in this section does not affect millage imposed to pay bonded indebtedness or operating expenses of a special tax district established pursuant to Section 4-9-30(5), but the special tax district is subject to the millage rate limitations in Section 4-9-30(5).

S.C. Code Ann. § 6-1-320 (2011), amended by Act No. 249, 2014 S.C. Acts ___ (emphasis added).

In addition, the following subsections were enacted by Act No. 249, 2014 S.C. Acts ___ and will be added as "an appropriately lettered subsection at the end [of S.C. Code Ann. § 6-1-320]."

> ( )(1) Notwithstanding the limitation upon millage rate increases contained in subsection (A), a fire district's governing body may adopt an ordinance or resolution requesting the governing body of the county to conduct a referendum to suspend the millage rate limitation for general operating purposes of the fire district. If the governing body of the county agrees to hold the referendum and subject to the results of the referendum, the millage rate limitation may be suspended and the millage rate may be increased for general operating purposes of the fire district. The referendum must be held at the time of the general election, and upon a majority of the qualified voters within the fire district voting favorably in the referendum, the millage rate may be increased in the next fiscal year. The referendum must include the amount of the millage increase. The actual millage levy may not exceed the millage increase specified in the referendum.
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> (2) This subsection only applies to a fire district that existed on January 1, 2014, and serves less than seven hundred homes.
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> ( ) Notwithstanding the limitation upon millage rate increases contained in subsection (A), the governing body of a county may adopt an ordinance, subject to a referendum, to suspend the millage rate limitation for the purpose of imposing up to six-tenths of a mill for mental health. The referendum must be held at the time of the general election, and upon a majority of the qualified voters within the county voting favorably in the referendum, this special millage may be imposed in the next fiscal year. The state election laws apply to the referendum mutatis mutandis. This special millage may be removed only upon a majority vote of the local governing body. The amounts collected from the increased millage:
>
> (1) must be deposited into a mental health services fund separate and distinct from the county general fund and all other county funds;
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> (2) must be dedicated only to expenditures for mental health services in the county; and
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> (3) must not be used to supplant existing funds for mental health programs in the county.

As your question relates directly to the statutory interpretation of S.C. Code Ann. § 6-1-320, it is necessary to provide a brief background on the subject to properly address your concerns. The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. Town of Mt. Pleasant v. Roberts, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011) (citing Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009)). Furthermore, the South Carolina Supreme Court has held that a statute should not be construed by concentrating on an isolated section or provision. Laurens County Sch. Dists. 55 & 56 v. Cox, 308 S.C. 171, 174, 417 S.E.2d 560, 561 (1992). A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 468, 636 S.E.2d 598, 606-07 (2006) (citing Browning v. Hartvigsen, 307 S.C. 122, 125, 414 S.E.2d 115, 117 (1992); Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 341, 47 S.E.2d 788, 789 (1948)).

"All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and the language must be construed in light of the intended purpose of the statute." State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (quoting Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000)). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction, and courts must apply the literal meaning of those terms. Sloan, 370 S.C. at 486-87, 636 S.E.2d at 616 (citing Carolina Power & Light Co. v. Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994)). Thus, like a court, this office must apply the plain meaning of the words contained in a statute when such terms are clear. Rejection of the plain meaning of statutory terms should be done only to escape absurdity that could not have possibility been the intent of the Legislature. Id. at 487, 636 S.E.2d at 616 (citing Kiriakides v. United Artists Commc'n, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994)).

2. The Plain Meaning of S.C. Code Ann. § 6-1-320

Understanding the rules of statutory construction, we will now apply those rules to S.C. Code Ann. § 6-1-320. Most importantly, it is necessary to discern the plain meaning of the provision and whether such meaning is clear and consistent with the purpose of its enactment.

As a preliminary matter, we note that S.C. Code Ann. § 6-1-320 applies to a "local governing body," which, for purposes of Article 3, Chapter 1, Title 6, is defined as "the governing body of a county, municipality, or special purposes district." S.C. Code Ann. § 6-1-300(3) (2004). It is therefore without question that the property tax millage cap and the exceptions applicable to that cap, as provided by S.C. Code Ann. § 6-1-320, apply to the Town of Edgefield as it is a municipality of South Carolina.

Moving forward to analysis of the plain meaning of the provision, subsection (A) of S.C. Code Ann. 6-1-320 establishes the millage "limitation," as referenced by the statute's title, by placing a cap on the amount local governing bodies may raise their general operating ("GO") millage rate. Except for years of reassessment, this cap is set to the previous year's millage rate plus an amount calculated to account for inflation (consumer price index or "CPI") and average increases in population, from the previous year. S.C. Code Ann. § 6-1-320(A)(1). In a year of reassessment, the "rollback millage" rate must be used in place of the previous year's millage rate. Id. Furthermore, by Act No. 57, 2011 S.C. Acts 257-58 (codified at S.C. Code Ann. § 6-1-320), subsection (A)(2) was added to S.C. Code Ann. § 6-1-320, which permits a local governing body to increase its millage rate as calculated under subsection (A)(1) (i.e. millage rate + average increase in CPI + percentage increase in population within the entity, all from the preceding year) by any millage rate increases allowed under subsection (A)(1), but not imposed, for three tax years prior to the year the current limit applies. S.C. Code Ann. § 6-1-320(A)(2).

Next, subsection (B) sets forth seven "exceptions" to the millage cap: "[n]otwithstanding the limitation upon millage rate increases contained in subsection (A), the millage rate limitation may be suspended and the millage rate may be increased upon a two-thirds vote of the membership of the local governing body for the following purposes . . . ." S.C. Code Ann. § 6-1-320(B). Seven exceptions to the cap, as previously quoted, are thereafter listed; if a local governing body qualifies for one of the seven exceptions listed under subsection (B) and the exception is approved by a two-thirds (2/3) vote from the governing body, this "additional millage levy above that permitted by subsection (A)" will be imposed. See S.C. Code Ann. § 6-1-320(B)(1)-(7), (C). Furthermore, effective June 6, 2014, the Legislature passed two additional exceptions to the millage rate limitation set by S.C. Code Ann. § 6-1-320(A). These

exceptions allow a county to increase its tax millage rate, by referendum, for the general operating purposes of a county's fire district and for mental health services. Act No. 249, 2014 S.C. Acts ___.[1]

3. Legislative Intent in the Enactment of S.C. Code Ann. § 6-1-320

Various opinions discussing S.C. Code Ann. § 6-1-320 and the purpose of its enactment have previously been issued by this Office. Because analysis of these opinions are particularly helpful in answering the questions you ask, we will highlight each opinion's significance below. Also of importance are the 2011 and 2014 amendments made to S.C. Code Ann. § 6-1-320 as well as the South Carolina Supreme Court's decision of Angus v. City of Myrtle Beach, 363 S.C. 1, 609 S.E.2d 808 (2005), which we will also reference. Collectively, by examination of the plain language of S.C. Code Ann. § 6-1-320, these authorities lead to the conclusion that local governing bodies must comply with the millage cap set by S.C. Code Ann. § 6-1-320(A) unless a specific exception to the millage cap applies. This interpretation comports with the presumed intent of the Legislature upon enactment of the provision, which, we believe, is clearly to limit a local governing body's ability to increase property taxes. In effect, this limitation protects the taxpayer from large increases in property taxes while still providing a consistent source of income for local governing bodies.

A basic interpretation of S.C. Code Ann. § 6-1-320 indicates that the Legislature intends to limit a governing body's ability to increase property taxes through its enactment. As was stated in our most recent opinion concerning S.C. Code Ann. § 6-1-320, "[t]he intent behind S.C. Code § 6-1-320 seems clear by its title: '[m]illage rate increase limitation; exceptions.' The stated intent is to limit the increase on taxes for special purpose districts [] and other political subdivisions []." Op. S.C. Att'y Gen., 2014 WL 1809641 (April 28, 2014). The overall intent of limiting a local governing body's authority to increase property taxes was also the conclusion we reached when analyzing the applicability of the exclusions listed in S.C. Code Ann. § 6-1-320(B). See Op. S.C. Att'y Gen., 2010 WL 4391632 (October 26, 2010). Specifically, we opined that the exclusions listed in S.C. Code Ann. § 6-1-320 are limited in both time and scope:

> [s]ection 6-1-320(B) provides a very narrow listing of exceptions to the general rule prohibiting local governing bodies from increasing their millage rates. By providing such a narrow list, we presume the Legislature intended to prohibit governing bodies from increasing property taxes except for in limited circumstances. . . .
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> Reading section 6-1-320(B) as a whole and keeping in mind that if any doubt exist[s] with regard to this provision that it should be resolved in favor of the taxpayer, we believe the Legislature intended to limit a local governing body's ability to exceed the millage rate cap under section 6-1-320(A) to the year in which the exception applies.

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[1] Specifically, the exception to the millage rate cap for fire district operations permits a fire district to adopt an ordinance or resolution requesting the governing body of a county to conduct a referendum to suspend the millage rate limitation for the general operating purposes of the fire district. If the county's governing body agrees, a referendum will be held. The millage rate limitation will be suspended, and the millage rate will be increased in the next fiscal year upon a majority vote of qualified voters in the fire district. The referendum must include the amount of the millage increase, and the millage levy cannot exceed the amount noticed on the referendum. Act No. 249, 2014 S.C. Acts ___.

The exception to the millage rate increase limitation for mental health services allows a county to adopt an ordinance, subject to referendum, to suspend the millage rate limitation for the purpose of imposing up to six-tenths of a mill for mental health. Upon enactment by a majority of the qualified voters within the county, the "special millage" will be imposed in the next fiscal year and can only be removed upon a vote of the local governing body. Id. at ___.

> Therefore, if [] [a local governing body] wishes to exceed the millage rate allowed pursuant to section 6-1-320(A), it must establish the applicability of one of the exceptions in subsection (B) for that particular year.

Id. at *2. To reach this conclusion, we made reference to the plain language of the statute and the meaning of certain terms the Legislature chose in drafting the provision. Id. First, we noted that the statute provides specific limits to the length of time certain exceptions apply. Id. In regards to subsection (B)(1)-(5) the statute states that:

> [i]f a tax is levied to pay for items (1) through (5) above, then the amount of tax for each taxpayer must be listed on the tax statement as a separate surcharge . . . . The surcharge must be continued only for the years necessary to pay for the deficiency, for the catastrophic event, or for compliance with the court order or decree.

S.C. Code Ann. § 6-1-320(B). Furthermore, independent from the October 26, 2010 opinion, we note that for increases in the millage cap made pursuant to S.C. Code Ann. § 6-1-320(B)(6), the Legislature also indicates that "[such] millage rate increase . . . must be rescinded five years after it was placed in effect or when the amount specified to be collected is collected, whichever occurs first." S.C. Code Ann. § 6-1-320(B)(6). Overall, listing the specific exceptions when the millage cap can be increased and providing direct reference to time limitations of certain exceptions gives clear direction from the Legislature that increases that may be applicable to the millage rate cap are narrowly tailored.

To further emphasize this point, we also made note of the Legislature's choice of the word "**suspended**" when it stated "the millage rate limitation may be suspended and the millage rate may be increased upon a two-thirds vote of the membership of the local governing body for the following purposes. . . ." See Op. S.C. Att'y Gen., 2010 WL 4391632 (Oct. 26, 2010) (citing S.C. Code Ann. § 6-1-320(B)). Looking to the definition of the word "suspended," we concluded that use of this term "indicates the millage rate allowable under subsection (A) is only temporarily replaced by that rate necessary to remedy the reason for the exception." Id. at *2. Furthermore, we made reference to the Legislature's requirement that excess millage rates allowed under S.C. Code Ann. § 6-1-320(B)(1)-(5) – referred to as a "**separate surcharge**" – must be listed apart from the general millage rate imposed on tax statements issued to taxpayers by local governing bodies. Id. at *3. From this analysis, we reasoned that the plain language of subsection (B) of the statute reveals "the Legislature's intent that any additional millage imposed above the general amount [pursuant to S.C. Code Ann. § 6-1-320(B)] must be kept separate and is only imposed on a temporary basis." Id. Again the specificity of the exceptions that apply to the general millage cap as well as the restrictions of when those limits apply, illustrate the Legislature's intent of limiting a local governing body's power to increase property taxes.

Also of relevance is a 2007 opinion of this Office written in response to an inquiry as to whether Sumter County could increase the millage on county tax bills to raise money for the purchase of residential development rights from undeveloped agricultural property owners with land near the centerlines of runways at Shaw Air Force Base. Op. S.C. Att'y Gen., 2007 WL 1031448 (March 20, 2007). Concluding that the purpose of funding the acquisition of such property rights did not qualify as an exception contained in S.C. Code Ann. § 6-1-320(B) that would permit Sumter County to raise the millage rate above the cap, we referenced a previous exception found in S.C. Code Ann. § 6-1-320(C) (2004), amended by Act No. 388, 2006 S.C. Acts 3143-45, that has since been removed. Id. at *2. The former exception permitted local governing bodies to override subsection (A) to allow for a millage rate increase so long as certain notice and public hearing requirements were met. See S.C. Code Ann. § 6-1-

320(C) (2004), amended by Act No. 388, 2006 S.C. Acts 3143-45.[2] The Legislature's deletion of this broad exception that gave local governing bodies significant authority to increase millage rates, further emphasizes the Legislature's goal of protecting the taxpayer from substantial property tax increases by restricting a local governing body's ability to implement millage rate increases.

Next, we point out a 2011 opinion of this Office concerning millage rate calculations made during a reassessment year. Op. S.C. Att'y Gen., 2011 WL 2648717 (June 28, 2011). As previously stated, subsection (A)(1) states that in years of reassessment, "rollback millage, as calculated pursuant to Section 12-37-251(E), must be used in lieu of the previous year's millage rate." S.C. Code Ann. 6-1-320(A)(1). S.C. Code Ann. 12-37-251(E) (2011) states that the formula to calculate rollback millage is as follows:

> [r]ollback millage is calculated by dividing the prior year property taxes levied as adjusted by abatements and additions by the adjusted total assessed value applicable in the year the values derived from a countywide equalization and reassessment program are implemented. This amount of assessed value must be adjusted by deducting assessments added for property or improvements not previously taxed, for new construction, for renovation of existing structures, and assessments attributable to increases in value due to an assessable transfer of interest.

From the Legislature's inclusion of a rollback millage calculation in reassessment years, this provision again illustrates the imposition of a safeguard for the taxpayer as well as a revenue source for local governing bodies. As we stated:

> the Legislature sought to place the tax revenues received in years of reassessment on par with tax revenues received in the year prior to reassessment and thus, avoiding the potential of placing an enormous burden on taxpayers owning property that increased in value under the reassessment. . . . We believe that the Legislature enacted the rollback provisions in sections 12-37-251 and 6-1-320 to prevent taxpayers from incurring a tax liability in reassessment years which is much higher than the previous year. Traditionally, this legislation protects the taxpayer by rolling back the millage to compensate for higher property values. However, while this legislation acts to protect taxpayers, we also believe that the Legislature sought to stabilize tax bills in order to provide municipalities with a consistent stream of revenue.

Op. S.C. Att'y Gen., 2011 WL 2648717 (June 28, 2011).

We also bring attention to the 2011 and 2014 amendments to S.C. Code Ann. § 6-1-320 to further illustrate the legislative intent in the enactment of this provision. Subsection (A)(2) was added to S.C. Code Ann. § 6-1-320 by Act No. 57, 2011 S.C. Acts 257-58, which states: "[t]here may be added to the operating millage increase allowed pursuant to item (1) of this subsection any such increase, allowed but not previously imposed, for the three property tax years preceding the year to which the current limit

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[2] S.C. Code Ann. § 6-1-320(C) (2004), amended by Act No. 388, 2006 S.C. Acts 3143-45 formerly provided:

> The millage rate limitation provided for in subsection (A) of this section may be overridden and the millage rate may be further increased by positive majority vote of the appropriate governing body. The vote must be taken at a specially-called meeting held solely for the purpose of taking a vote to increase the millage rate. The governing body must provide public notice of the meeting notifying the public that the governing body is meeting to vote to override the limitation and increase the millage rate. Public comment must be received by the governing body prior to the override vote.

applies." It is logical that a court would find this subsection was added to account for situations such as the one the Town of Edgefield is currently facing. With this provision, it is our opinion that the Legislature attempts to provide a means for local governing bodies to reinstate or increase a millage rate while at the same time protecting the taxpayer from a significant increase in property taxes by limiting increases to those allowed for the current year plus the three tax years prior.

Furthermore, the most recent amendment to S.C. Code Ann. § 6-1-320, adding two additional exceptions to the millage cap for fire district operations and mental health services, safeguards the taxpayer by requiring these exceptions be passed pursuant to referendum by a majority of qualified voters in the applicable district or county. See Act. No. 249, 2014 S.C. Acts ___. In addition, to override the general millage cap for fire district operations, the Legislature makes clear that the millage increase must specifically be listed on the referendum and that the millage increase actually levied cannot exceed the amount listed on the referendum. Id. Likewise, the mental health services exception prevents against large increases in property taxes by capping the increase at six-tenths of a mill. Id.

Finally, this opinion would not comprehensive of the subject without reference to our supreme court's decision in Angus v. City of Myrtle Beach, 363 S.C. 1, 609 S.E.2d 808 (2005). In this decision the court held that the City of Myrtle Beach erroneously calculated its property tax rollback millage rate during a reassessment year by including non-statutory variables within the calculation. Id. at 3-5, 609 S.E.2d at 809-10. Of particular importance, in its ruling, the court emphasized the necessity of strict abidance by legislative provisions fixing a tax rate. Id. at 4-5, 609 S.E.2d at 809-10. Specifically, the court stated:

> [t]he fixing of a tax rate is a legislative function that must be given the greatest respect by the courts unless that function is exercised in an illegal manner. It is basic hornbook law that when a government entity levies a tax, the method outlined in the applicable law must be followed, at least in substance and especially concerning all mandatory provisions.

Id. Pursuant to the supreme court's ruling in Angus, noting the "basic hornbook law," it is our opinion that a court would find all calculations set by the legislature pertaining to millage rates must be followed precisely.

The aforementioned opinions of this Office as well as analysis of the 2011 and 2014 amendments to S.C. Code Ann. § 6-1-320 show the Legislature's intent in enacting S.C. Code Ann. § 6-1-320 was to protect the taxpayer by limiting a local governing body's ability to increase property taxes while at the same time providing a mechanism for a consistent source of income for local governing bodies. The Legislature's intent of limiting a local governing body's ability to increase property taxes is solidified in Angus by direct indication from the supreme court that legislative provisions fixing a tax rate must be strictly followed and are not subject to interpretation by local governing bodies. It follows that application of the plain meaning of S.C. Code Ann. § 6-1-320 produces a clear and logical result, absent of any absurdity. Thus, as was determined in Angus and the previous opinions issued by this Office discussed above, we believe that courts as well as local governing bodies are prohibited from straying from and must strictly apply the plain meaning of S.C. Code Ann. § 6-1-320.

Conclusion

Because it is impossible to know with certainty how a court would rule in regards to the specific questions raised in your correspondence, we advise seeking a declaratory judgment to resolve this novel question of law. Nonetheless, it is our opinion that a court would find S.C. Code Ann. § 6-1-320 mandates that local governing bodies follow the millage rates permitted under subsection (A) unless an

exception is warranted under subsection (B) or Act No. 249, 2014 S.C. Acts ___.[3] Since an increase from 0 to 81 mills would exceed the millage cap, we do not believe that the Town of Edgefield can reinstate 81 mills as its millage rate. Furthermore, we believe that the increase in property taxes that would result if the millage rate in the Town of Edgefield was raised from 0 to 81 is presumably what the Legislature sought to prevent by enactment of S.C. Code Ann. § 6-1-320.

It follows that when reinstating its millage rate, the Town of Edgefield must apply subsection (A)(1) of S.C. Code Ann. § 6-1-320 to arrive at its base millage rate. In all years except for those of reassessment, this number is calculated based on the previous year's millage rate, plus increases permitted based on inflation and population increase. In years of reassessment, the rollback millage rate must be used in place of the previous year's millage rate, as calculated pursuant to S.C. Code Ann. § 12-37-251(E). However, pursuant to subsection (A)(2) of S.C. Code Ann. § 6-1-320, the millage rate calculated pursuant to subsection (A)(1) can be increased by the previous amounts allowed under subsection (A)(1) that were not imposed for three property tax years preceding the year to which the current limit applies. Finally, although you make no mention of a scenario present in the Town of Edgefield that may give rise to an exception to the millage rate cap, pursuant to S.C. Code Ann. § 6-1-320(B) and Act No. 249, 2014 S.C. Acts ___, millage rates can be increased upon qualification for one of the seven exceptions enumerated in S.C. Code Ann. § 6-1-320 subsection (B) upon a two-thirds (2/3) vote of the membership of the local governing body or by a majority vote conducted by referendum for the exceptions specified by Act No. 249, 2014 S.C. Acts ___.

If this Office can be of further assistance in answering your questions, please do not hesitate to contact us.

Sincerely yours,

Anne Marie Crosswell

Anne Marie Crosswell
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

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[3] This conclusion is consistent with two previous opinions issued by this Office directly on point: Op. S.C. Att'y Gen., 2014 WL 1809641 (April 28, 2014) (concluding that "this Office believes a court will find pursuant to the literal language of the statute the millage for the municipality would increase by more than the amount allowed in S.C. Code § 6-1-320 if the municipality were to go from 0 mils to 51 mils") and Op. S.C. Att'y Gen., 2007 WL 1031448 (March 20, 2007) (stating that "in finding the exceptions to the general limitation on millage rate increase not applicable for the purpose for which Sumter County wishes to increase its millage rate, we suggest Sumter County look to other means of funding the acquisition of such property rights").