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The State of South Carolina

77 #1826



Office of the Attorney General

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November 6, 1985

Honorable Ben E. Thrailkill, Jr., DDS  
Representative, Horry County  
Box G  
Surfside Beach, SC 29577

Dear Representative Thrailkill:

You have requested the opinion of this Office as to whether the Horry County School District has the authority to spend surplus school funds without the approval of the Horry County legislative delegation. According to the information that you have provided, the surplus has not been budgeted and has arisen from delinquent tax collections and investment interest that exceeded the budget line items for those sources of revenue.

Act 239, Acts and Joint Resolutions of South Carolina, 1983 provides that the legislative delegation for Horry County shall instruct the County Auditor to "...levy the millage which in their discretion is necessary for school purposes...." <sup>1/</sup> Therefore, because the delegation is given the "discretion" to set the "necessary" level of millage, the Legislature has given the delegation the authority, in setting millage, to weigh potential revenue sources and expenditures such as the availability or expenditure of the surplus money. Although the delegation is not given express authority to approve the expenditure of this surplus money, nothing in the Act would appear to prohibit the delegation from notifying the appropriate authorities in advance as to what effect the expenditure or retention of this surplus money may have on the level of future tax millage. In addition, we note that any expenditure of this surplus money must be in accordance with an approved budget. See Article X, §§ 7(b) and 8, Constitution of South Carolina (1895), as amended.

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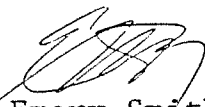
<sup>1/</sup> This opinion addresses only the terms of this statute. The delegation's general authority over tax millage was addressed in a previous opinion of this office concerning a similar predecessor statute. Ops. Atty. Gen. (May 16, 1983).

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In conclusion, the authority given the legislative delegation under Act 239 to set the level of school millage appears to give the delegation the discretion to consider all potential revenue sources and expenditures of the district including the availability and use of the surplus money. Accordingly, although not given express approval authority over the use of surplus money, the delegation appears to have the authority under this Act to notify the appropriate authorities as to what effect the school district's expenditure or retention of this money might have on future tax millage. Finally, I note that surplus money can be spent only in accordance with an approved budget.

If you have any questions, please do not hesitate to contact me.

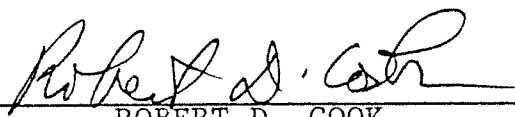
Yours very truly,

  
J. Emory Smith, Jr.  
Assistant Attorney General

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Enclosure

REVIEWED AND APPROVED:

  
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ROBERT D. COOK  
Executive Assistant for Opinions