ALAN WILSON
ATTORNEY GENERAL

September 18, 2014

The Honorable Stephen Goldfinch, Jr.
Representative
District No. 108
P.O. Box 823
Murrell's Inlet, SC 29576

Dear Representative Goldfinch:

Thank you for your opinion request regarding the interpretation of statutory authority governing millage rate increases for special purpose districts in the context of the Murrell's Inlet-Garden City Fire District's desire to increase its millage rate from 10 to 14 mills. Specifically you ask whether the referendum procedure referenced in S.C. Code Ann. § 6-11-271 (2004), which the Legislature has enacted as a mechanism for a special purpose district to increase millage rates within its district for maintenance and operation, constitutes as a "binding" referendum. You also ask our opinion on any legal guidance pertaining to the language that should be used for the ballot question should a referendum be held.

To provide a brief context to your questions, the Murrell's Inlet-Garden City Fire District ("The MI-GC Fire District") is a joint county fire district that was created by Act No. 876 during the 1966 Legislative Session. A joint county fire district classifies as a special purpose district, defined by S.C. Code Ann. § 4-8-10 (1986) as "any district created by an act of the General Assembly or pursuant to general law and which provides any local governmental service or function including, but not limited to, fire protection, sewerage treatment, water distribution, and recreation." The MI-GC Fire District services homes in parts of Georgetown and Horry Counties, as specified by the boundary lines contained in S.C. Code Ann. § 4-23-10 (1986). In addition, taxes are levied yearly for operations and maintenance of the MI-GC Fire District up to specific amount, as specified in S.C. Code Ann. § 4-23-40 (1986). While S.C. Code Ann. § 4-23-40 (1986) caps the fire district's millage rate at 5 mills, this rate was subsequently increased to 10 mils in 1992. The Fire District now desires to increase its millage rate from 10 to 14 mills for the purpose of operating what would be the District's fourth fire station.

1. A Special Purpose District's Power to Levy Ad Valorem Taxes

As noted in a prior opinion of this office, local governing bodies, including special purpose districts, have limited authority to increase millage rates for operating expenses. Op. S.C. Att'y Gen., 2003 WL 21040134 (Feb. 2003). Campbell v. Hilton Head No. 1 Public Service District, 354 S.C. 190, 192, 580 S.E.2d 137, 138 (2003) provides a useful explanation of

the reason behind the limitations placed on a special purpose district's ability to levy taxes. Specifically, the Court addressed Weaver v. Recreation District, 328 S.C. 83, 492 S.E.2d 79 (1997), noting that:

> [i]n *Weaver v. Recreation District*, 328 S.C. 83, 492 S.E.2d 79 (1997), we ruled that the statute which authorized [a] recreation district's appointed commission to levy a property tax violated the State Constitution's provision forbidding taxation by unelected officials. The general holding from *Weaver* is that any legislative delegation of taxing authority to an **appointed** body unconstitutionally permitted "taxation without representation." *Id.* The *Weaver* Court, however, ordered only prospective relief, stating the following:
> We are cognizant... of the disruptive effect today's holding could have on the financial operation of numerous special purpose districts, local commissions and boards throughout this state. Accordingly, in order to give the General Assembly an opportunity to address this problem, we hold this decision shall be applied prospectively beginning December 31, 1999.
> *Id.* at 87-88, 492 S.E.2d at 82. In response, the Legislature passed legislation in 1998 that removed the taxing power from appointed bodies such as the District's commission. *See* S.C. Code Ann. § 6-11-271 (Supp. 2002).

Thus, in summary, pursuant to the Supreme Court's ruling in Weaver, property taxes assessed by an appointed governing body of a special purpose district violate the South Carolina Constitution forbidding taxation by unelected officials. In response to the Supreme Court's ruling, our General Assembly passed S.C. Code Ann. § 6-11-271 (2004), taking "all discretionary taxing power out of the hands of appointed bodies such as the District's governing board." Lawyer v. Hilton Head Public Service Dist. No. 1, 220 F.3d 298, 300 (4th Cir. 2000) (discussing Weaver v. Recreation District, 328 S.C. 83, 492 S.E. 2d 79 (1997) and the enactment of S.C. Code Ann. § 6-11-271).

a. S.C. Code Ann. § 6-11-271

S.C. Code Ann. § 6-11-271 (2004), titled "[m]illage levy for special purpose district" applies to a "special purpose district or public service authority, however named, created prior to March 7, 1973, by or pursuant to an act of the General Assembly this State." S.C. Code Ann. § 6-11-271(A). As noted above, the MI-GC Fire District was created in 1966 and constitutes as a "special purpose district" pursuant to the definition of such set forth in S.C. Code Ann. § 4-8-10 (1986). Therefore, it follows that the provisions of S.C. Code Ann. § 6-11-271 (2004) are applicable to the MI-GC Fire District.

Pursuant to the holding in Weaver, S.C. Code Ann. § 6-11-271(2004) defines the millage rates for special purpose districts and also provides a mechanism for increasing millage rates by way of a referendum held within the district. Because S.C. Code Ann. § 4-23-20 (1986) provides for appointment of the MI-GC Fire District's Board of Fire Control by the Governor and S.C. Code Ann. § 4-23-40 (1986) caps the MI-GC Fire District's millage rate at a certain amount, the guidelines for its millage rate limitations falls within the parameters of S.C. Code Ann. §§ 6-11-271(B)(1)-(2). Specifically, S.C. Code Ann. §§ 6-11-271(B)(1)-(2) state that:

> "(B)(1) [t]his subsection applies only to those special purpose districts the governing bodies of which are *not elected* but are presently authorized by law to levy for operations and maintenance in each year millage up to or not exceeding a *given amount* and did impose this levy in fiscal year 1997-98.
>
> (2) [t]here must be levied annually in each special purpose district described in item (1) of this subsection, beginning with the levy for fiscal year 1999, ad valorem property tax millage in the amount equal to the millage levy imposed in fiscal year 1998.

S.C. Code Ann. §§ 6-11-271(B)(1)-(2) (emphasis added).

While S.C. Code Ann. §§ 6-11-271(B)(1)-(2) (2004) in effect prevents MI-GC Fire District from levying taxes, S.C. Code Ann. § 6-11-271(D) (2004) does set forth a mechanism for special purpose districts to propose an increase in its millage rate by referendum. S.C Code Ann. § 6-11-271(D) (2004) reads as follows:

> notwithstanding any other provision of law, any special purpose district within which taxes are authorized to be levied for maintenance and operation in accordance with the provisions of subsections (B) or (C) of this section, or otherwise, *may* request the commissioners of election of the county in which the special purpose district is located to conduct a *referendum to propose* a modification in the tax millage of the district. Upon receipt of such request, the commissioners of election *shall* schedule and conduct the requested referendum on a date specified by the governing body of the district. *If approved* by referendum, such modification in tax millage *shall remain effective until changed in a manner provided by law.*

S.C. Code Ann. § 6-11-271(D) (2004) (emphasis added). S.C. Code Ann. § 6-11-273 (2004) specifies that if pursuant to a referendum, "a majority of the qualified electors of the district voting in the referendum vote in favor of the proposed tax millage change" then "the governing body of the district shall by resolution adopt the new millage rate which shall thereupon have full force and effect of law." We note that S.C. Code Ann. § 6-11-275 permits a special purpose district "totally located within a county" and "in existence prior to March 7, 1973" to increase its millage rate "upon approval of the governing body of the county in which they are located." Yet, because the MI-GC Fire District services both Georgetown and Horry Counties, this section is inapplicable.

With the aforementioned context in mind and upon the conclusion that S.C. Code Ann. § 6-11-271(D) (2004) applies to the MI-GC Fire District, we turn to your first question of whether or not the referendum referenced in S.C. Code Ann. § 6-11-271(D) (2004) is "binding." Being a question of statutory construction, we will briefly note the applicable rules pertaining thereto. "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)). 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)). 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)). 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)).

Applying the rules of construction to S.C. Code Ann. § 6-11-271(D) (2004), it is our opinion that the statute's plain language, when read as a whole, directs that the vote taken during a referendum to increase the millage limitation of a special purpose district is binding rather than advisory. The statute's purpose, which can be derived from its title as well as the history leading to its enactment, is to provide a defined mechanism to increase a "millage levy for special purpose district[s]" through the vote of the district's population by way of a referendum. S.C. Code Ann. § 6-11-271 (2004). As noted above, S.C. Code Ann. § 6-11-271(D) (2004) states that the special purpose district "may request the commissioners of election of the county in which the special purpose district is located to conduct a referendum to propose a modification in the tax millage of the district." Id. Upon receipt of this request, it is our opinion that the language the legislature included within the statute indicates that a referendum must be held upon such a request; the statutory language in support states "[u]pon receipt of such request, the commissioners of election *shall* schedule and conduct the requested referendum on a date specified by the governing body of the district." Id. (emphasis added). Finally, if the millage rate is approved, the plain language of the statute directs that the rate becomes effective and can only be changed as permitted by law: "[i]f approved by referendum, such modification in tax millage *shall remain effective* until changed in a manner provided by law." Id. (emphasis added). This is further emphasized in S.C. Code Ann. § 6-11-273 (2004), which states in part that: "[i]f a majority of the qualified electors of the district voting in the referendum vote in favor of the proposed millage change, the governing body of the district shall by resolution adopt the new millage rate which shall thereupon have full force and effect of law. Thus, the plain language of both S.C. Code Ann. § 6-11-271(D) (2004) and S.C. Code Ann. § 6-11-273 (2004) provide no indication that a referendum referenced therein would be advisory rather than binding.

It is our opinion that this interpretation comports with the intent of the legislature in enacting this section which, as mentioned previously, is to provide special purpose districts with a means to increase millage rates for maintenance and operating expenses only through approval of the district's population by referendum. In a prior opinion of this Office, we reached the same conclusion as to the Legislative intent in enacting S.C. Code Ann. § 6-11-271 (2004) when we stated that:

> [t]he effect of section 6-11-271 is to take discretion with regard to taxation away from appointed commissions, placing the final say in the taxation of a district in the General Assembly, in the people of the district acting by referendum, or in the governing body of the county. SEE WEAVER, 328 S.C. at 86, 492 S.E.2d at 81 (characterizing CROW V. MCALPINE, 277 S.C. 240, 285 S.E.2d 355 (1981) as standing for the proposition that "the legislative power to tax may not be conferred on a purely appointive body but must be under the supervisory control of elected bodies"); HAGLEY HOMEOWNERS ASS'N V. HAGLEY WATER, SEWER, AND FIRE AUTHORITY, 326 S.C. 67, 485 S.E.2d 92 (1997) ("While the General Assembly can delegate its taxing authority to a subordinate agency, it can only delegate this power to a body which is either composed of persons assented to by the people or subject to the supervisory control of a body chosen by the people.").

Op. S.C. Att'y Gen., 2012 WL 889088 (Feb. 29, 2012).

We also find support for this conclusion from case law distinguishing between an advisory and binding referendum. In Griggs v. Hodge, 229 S.C. 245, 250, 92 S.E.2d 654, 657 (1956), our Supreme Court, referencing a referendum concerning whether a hospital was to be built in Chesterfield County, stated that "[t]he conclusion is inescapable that the referendum was merely of an advisory nature" and that "[t]he General Assembly was at liberty to disregard the wishes of the voters and take whatever action it saw fit with reference to the establishment of the hospital." The Court reached this conclusion by looking at the terms of the General Assembly's joint resolution directing that the special election be held. Id. Specifically, it stated the election was to be held to determine "whether or not the qualified electors of the county *desire* the establishment of a county hospital by the County of Chesterfield." Id. at 250, 92 S.E.2d at 657. The joint resolution also required the Commissioners of the Election to "report the result of the election to the Legislative Delegation of the county.'" Id. at 248, 92 S.E.2d at 656.

Comparing the joint resolution directing that the "advisory referendum" be held in Griggs to the direction given by the General Assembly for special purpose districts to request a referendum to vote on an increase to a district's millage limitation under S.C. Code Ann. § 6-11-271(D) (2004), the two appear to be clearly distinguishable. In the joint resolution that was the subject of Griggs, the General Assembly made clear that the election was to determine "whether or not the qualified electors of the county *desire[d]* the establishment of a county hospital. . . ." Id. at 250, 92 S.E.2d at 657. Furthermore, this information was gathered for the benefit of the Delegation, as indicated by the direction of the joint resolution to "report the result of the election to the Legislative Delegation of the county." Id. at 248, 92 S.E.2d at 656. This case leads to the conclusion that an advisory referendum's purpose is to provide the public with an opportunity to express their views and a way for local governing bodies to ascertain such information.[1]

---

[1] See also Thomas v. Hollis, 232 S.C. 330, 334, 102 S.E.2d 110,112 (1958) (noting in the recitation of facts of the case that, in determining whether to build a new school, "[t]he Commission suggested to the Board that in the interest of harmony an *advisory referendum* be held *to give the people an opportunity to express their views*." (emphasis added).

Alternatively, S.C. Code Ann. § 6-11-271(D) (2004) permits a special purpose district to request a referendum to "*propose* a modification in the tax millage of the district" (emphasis added). And, if approved, "the governing body of the district *shall* by resolution adopt the new millage rate which shall thereupon have the full force and effect of law." S.C. Code Ann. § 6-11-273 (2004) (emphasis added). The Legislature further emphasizes that "such modification in tax millage *shall remain effective* until changed in a manner by law." S.C. Code Ann. § 6-11-271(D) (emphasis added). Stating that the modification can be *proposed* to the district, rather than merely obtaining the district's *desire* is illustrative of the referendum's binding nature. In addition, if approved, S.C. Code Ann. § 6-11-273 (2004) indicates that the rate becomes effective at that time through the inclusion of the phrase "the governing body of the district *shall* by resolution adopt the new millage rate which shall thereupon have the full force and effect of law." (emphasis added). Nothing suggests that subsequent to the vote conducted by the referendum, additional legislative action must be taken to implement the millage rate. Thus, in our opinion, we believe that a court would determine that if a referendum is held and approved pursuant to S.C. Code Ann. § 6-11-271(D) (2004), such results are binding in nature as opposed to advisory. Again, this conclusion comports with the reason for the General Assembly's enactment of S.C. Code Ann. § 6-11-271, which was to take the power to tax away from appointed governing bodies of special purpose districts and into the hands of the General Assembly, the district's population by way of referendum, or in the governing body of the county.

b. S.C. Code Ann. § 6-1-320 (2011)

Next, we will briefly discuss S.C. Code Ann. § 6-1-320, and, in particular, a recent amendment to this section pertaining to fire districts. S.C. Code Ann. § 6-1-320 (2011), amended by Act No. 249, 2014 S.C. Acts ___, effective June 6, 2014. S.C. Code Ann. § 6-1-320 (2011) sets a "limitation" or cap on the amount a "local governing body" may increase its millage rate from year to year and provides specific exceptions for when a local governing body may deviate from the cap amount. A "local governing body," for purposes of S.C. Code Ann. § 6-1-320 (2011) and other provisions within Article 3, Chapter 1, Title 6, is defined as "the governing body of a county, municipality, or *special purpose district.*" S.C. Code Ann. § 6-1-300(3) (2004) (emphasis added). While it is our opinion that S.C. Code Ann. § 6-1-320 (2011) is applicable to special purpose districts and therefore applicable to the MI-GC Fire District, we raise it here in regards to an amendment passed by Act No. 294 on June 6, 2014. In part, Act No. 294 allows a county to increase the tax millage rate by referendum for the general operating purposes for fire districts in existence on January 1, 2014 and serving less than seven hundred homes. Act No. 249, 2014 S.C. Acts ___. The amendment, in pertinent part, reads as follows:

> 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.
>
> (2) This subsection only applies to a fire district that existed on January 1, 2014, and serves less than seven hundred homes.

Id. Albeit informal, research shows that the MI-GC Fire District services approximately 9,800 people. Therefore, while we assume the district serves well over 700 homes and is outside of the scope of Act No. 249, we believe it was worthy of noting to comprehensively answer your concerns and will be helpful in addressing your second question as to recommendations on the language that should be used on the ballot for a referendum held pursuant to S.C. Code Ann. § 6-11-271(D) (2004).

2. General Legal Guidance on Language to be used When Phrasing Questions for an Election Ballot

We now turn to your second question pertaining to legal guidance on the language to be included when phrasing a question for the ballot of a referendum held pursuant to S.C. Code Ann. § 6-11-271(D) (2004). While it does not appear that the Legislature has provided a specific statutorily mandated format to be used, we will note the general rules pertaining to ballot questions in an election that which, in our opinion, should be applied. S.C. Code Ann. § 7-13-400 (1976) sets forth the general format of a ballot when questions are submitted to a vote of the people. Specifically, this section instructs the use of the questions "[i]n favor of the question or issue (as the case may be)" or "[o]pposed to the question or issue (as the case may be)" and that "[t]he voter shall be instructed in substance, if he wishes to vote in favor of the proposition to place a check or cross mark in the square after the words first above written and if he wishes to vote against the proposition to place a check or cross mark in the square after the words second above written." S.C. Code Ann. § 7-13-400 (1976). As a question would be submitted to the public in regards to the millage rate increase for operational costs of the MI-GC Fire District, it is our opinion that the format provided in S.C. Code Ann. § 7-13-400 (1976) should be followed.

In addition, the context of the question posed in the ballot must be neutral. In Bellamy v. Johnson, 234 S.C. 172, 175, 107 S.E.2d 33, 34-35 (1959), our Supreme Court nullified election results due to a misleading stipulation[2] on a ballot finding that the stipulation was an "empty promise" "unfairly calculated to induce favorable votes. . . ." Furthermore, in Douan v. Charleston County Council, 357 S.C. 601, 612, 594 S.E.2d 261, 267 (2003), the Court invalidated election results because the voter instructions "appear[ed] calculated to persuade and ultimately mislead voters into voting in favor of the tax . . . ." The Court went on to note that "the fundamental integrity of the election process requires that the voters be presented with an objectively phrased choice on election day. Section 7-13-400 sets forth the format to create a

[2] Specifically, the stipulation was used on a ballot to determine whether certain property should be annexed to the municipality, and stated that if the measure passed, the municipality, would exempt parcels of more than 10 acres in the newly annexed area from taxation until the property was sub-divided. Bellamy v. Johnson, 234 S.C. 172, 107 S.E.2d 33 (1959).

neutrally worded Ballot and does not contemplate words of advocacy." Id. at 613, 594 S.E.2d at 267.

Last, we find guidance in the recently enacted amendment to S.C. Code Ann. § 6-1-320, permitting a fire district's governing body to 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 it meets the qualifying factors, which we discussed above. See Act No. 249, 2014 S.C. Acts ___. While we presume the size of the MI-GC Fire District makes Act No. 249 inapplicable to it, its requirement that "the referendum must include the amount of the millage increase" and that "[t]he actual millage levy may not exceed the millage increase specified in the referendum" would, in our opinion, be a logical guideline to follow in regards to a referendum ballot question held pursuant to S.C. Code Ann. § 6-11-271(D)(2004).

Conclusion

In summary, based on the plain language of S.C. Code Ann. § 6-11-271(D) (2004), case law illustrating the distinction between an advisory and binding referendum, and, perhaps most importantly, the ruling in Weaver that led to the enactment of S.C. Code Ann. § 6-11-271, it is our opinion that a court would find the results of a referendum held pursuant to § 6-11-271(D) are binding, not advisory. Furthermore, it is our opinion that the general rules pertaining to the neutrality of ballot questions in an election should be followed. Last, in review of the recent amendment to S.C. Code Ann. § 6-1-320 (2011) by Act No. 249 (2014) and in line with our opinion of the binding nature of a referendum held pursuant to S.C. Code Ann. § 6-11-271(D), we suggest that the amount of the millage increase be included in the ballot question and that the actual millage rate imposed not exceed the increase set forth therein.

If we can answer any further questions pertaining to this opinion, please do not hesitate to contact our office.

Sincerely yours,

Anne Marie Crosswell

Anne Marie Crosswell
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General