

1984 WL 249788 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 19, 1984

\*1 The Honorable Harry A. Chapman, Jr.  
South Carolina State Senate  
Room 313  
Gressette Building  
P. O. Box 142  
Columbia, South Carolina 29202

Dear Senator Chapman:

You have requested the advice of this office as to the effect of the proposed Education Improvement Bill (Bill) on local school tax millage for the Greenville County School District (District). According to information provided to this office, no specific provisions for millage are currently pending for the district.

Present provisions for school taxes in that district are contained in Act 238, Acts and Joint Resolutions of South Carolina, 1983. Although the Act provided for a 71 and 9/10 mill tax in the 1983-84 fiscal year, the law provided that the levy was to revert to 67 4/10 mills after that fiscal year. The four and 1/2 mill increase in 1983-84 was to be used for pay raises and an audit. Although Act 349 of 1973 provides for a 92 3/4 millage ceiling in Greenville County, this ceiling appears to have been amended by the specific and apparently mandatory provisions in the more recent Act 238. Sutherland Statutory Construction, Vol 2A §§ 51.05 and 57.03 (4th Ed) <sup>1</sup> , <sup>2</sup> .

Thus, the school tax millage to be levied in Greenville County in 1984-85 would be 67 4/10, under present authority and in the absence of a referendum. See note 2 supra.

According to your staff, the sections of the bills with which you are concerned are: § H 3267, Part II, Division II, Subdivision C, Sub-Part 2, § 1(b) p. 840 (teacher salary schedules) and Division V § 2, p. 850 (minimum local funding). The Senate versions of these provisions are set out at pages 822 and 835. The teacher salary provisions in both bills require local salary supplements to be no less than the 1983-84 levy. The House version of the minimum funding provision requires school districts to maintain the level of financial effort provided in fiscal year 1983-84. The Senate version of this provision appears to choose 1985-86 as the base year for funding and, thus, would not have any affect on funding for the 1984-85 school year.

Although the above noted provisions require various levels of funding, they do not expressly provide for the means of raising local revenue. A previous opinion of this office held that the Education Finance Act (§ 59-20-10, et seq. of the Code of Laws of South Carolina (1976)) grants no powers of taxation even though it requires increases in funding. Ops. Atty. Gen. (August 8, 1980). For the same reasons cited in that opinion, the proposed bills contain no implied grant of taxation authority. Moreover, for these reasons and because the bills contain penalty provisions failures to raise local revenue, they cannot be deemed to contain self-executing provisions for increases in local tax millage. These same conclusions also apply to the provisions for salary increases.

Although the proposed bills do not contain express or implied provisions for raising tax millage, the House version of the minimum funding provision would require funding at least at the 1983-84 level. <sup>3</sup> Because Act 238, supra, provides for a reduction in the Greenville millage in 1984 the school district would be in violation of the House version unless its base increased sufficiently to allow the same level of revenue to be raised in 1984-85 as was raised in 1983-84 when the millage was higher.

Because the legislature appears to have retained the primary power to set millage the Greenville school district, the responsibility for raising that millage appears to rest with the General Assembly. Cf. Ops. Atty. Gen. (August 18, 1983 and April 12, 1977). Because the legislature has not ajourned, we need not address what the legal effect would be if any, if the General Assembly did not increase the millage for the 1984-85 school year and the school district did not meet the levels of funding required by proposed Education Improvement bill provisions. See Id.

\*2 In conclusion, none of the proposed provisions in the Education Improvement bills provide the means for increasing local millage nor are they self-executing. Therefore, any necessary millage increases would have to be undertaken by separate authority. As to the Greenville County School District, legislative action may be required for any additional millage increases needed to meet the level of funding required by proposed provisions in the Education Improvement bills.

If we may be of other assistance, please let us know.

Yours very truly,

J. Emory Smith, Jr.  
Assistant Attorney General

#### Footnotes

- 1 In reaching this conclusion, we are treating Act 238, as having the same effect as an act even though it apparently is a joint resolution Ops. Atty. Gen. (September 27, 1976).
- 2 But see Act. 1349 of 1968 which permits increases in the ceiling by a favorable vote in a referendum. No opinion is expressed now as to whether Act 1349 would allow an increase in the Act 238 millage which appears to be an exact millage fixed by the legislature rather than a ceiling. See Ops. Atty. Gen. (April 12, 1977) which preceded Act 238.
- 3 The teacher salary provisions constitute only a portion of the district's budget whereas the minimum local funding provision in the House bill (Division V § 2) addresses overall local funding. Thus, this minimum local funding provision appears to be the one most affected by local revenue sources.

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