

1981 WL 158215 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 2, 1981

*1 The Honorable Thomas L. Moore
Senator
District 8
Gressette Senate Office Building, Suite 606
Columbia, South Carolina 29202

Dear Senator Moore:

You have asked the opinion of this Office on several questions concerning the 1980 act bearing ratification number 550 [hereinafter R-550; copy attached] and the tax millage to be established and levied for the 1981-1982 fiscal year for the operation of the Aiken County School District. The inquiries presented may be paraphrased as follows:

1. Pursuant to Section 2 of R-550, may the Aiken County Board of Education call a referendum to increase the tax millage to be levied for the operation of the District for the 1981-1982 fiscal year?
2. Is the 4.4 millage increase established in Section 1 of R-550 effective in the 1981-1982 fiscal year?
3. Who has the authority to increase the tax millage to be levied for the operation of the District?

Section 21-1038.6 of the 1962 Code of Laws of South Carolina, as amended, governs the amount of the tax levy that may be directed by the Aiken County Board of Education. In the case of the [Aiken County Board of Education v. Knotts](#), 262 S.E.2d 411 (1980), the Supreme Court struck as unconstitutional a major portion of the third paragraph of Section 21-1038.6. The remaining language of that paragraph relevant to your inquiries provides:

If the county property tax levy recommended by the board is not in excess of that for the current fiscal year and is otherwise in the limits provided by law, the county auditor shall levy and the treasurer shall collect the county property taxes in an amount sufficient to meet this budget.

The Court specifically noted that this language did not permit the Board of Education to increase tax levies.

In response to the aforementioned case, R-550 was enacted. Section 1 thereof increased the levy for the operation of the School District for the 1980-1981 fiscal year 4.4 mills over that for the 1979-1980 fiscal year, or a total authorization of 96.4 mills. Section 2 authorized the levying of millage above that established in Section 1 if approved in a referendum called by the Board of Education.

The first question posed by you asks whether the referendum procedure provided by Section 2 of R-550 may be utilized for increasing the millage for the 1981-1982 fiscal year. A review of Section 1 and the title of R-550 establish that the purpose of the act and the legislative intent was to provide a tax millage, including an increase over the previous fiscal year, for the School District for the 1980-1981 fiscal year. There is no indication in Section 2 that it was for a purpose different than Section 1 and was intended to apply to fiscal years subsequent to 1980-1981. [Hay v. South Carolina Tax Comm.](#), 255 S.E.2d 837 (1979); [Belk v. Nationwide Mutual Insurance Co.](#), 244 S.E.2d 744 (1978). Therefore, it is the opinion of this Office that Section 2 of R-550 does not provide authority for the calling of a referendum to increase the millage to be levied for the 1981-1982 fiscal year.

*2 The next question asks whether the 96.4 millage established in Section 2 of R-550 is effective for the 1981-1982 fiscal year. Section 21-1038.6, as noted above, permits the Board of Education to direct for the next fiscal year the levying of millages authorized for the current fiscal year. R-550 authorized the levying of 96.4 mills for the current 1980-1981 fiscal year. It is the opinion of this Office that Section 21-1038.6 authorizes the Board of Education to direct for the 1981-1982 fiscal year the levy of the same millage authorized for the 1980-1981 fiscal year, or 96.4 mills.

Your final question asks who has the authority to increase the tax millage to be levied for the operation of the School District. There are no current acts which vest this power with the Board of Education or any other governmental body or provide a procedure for increasing the millage. Therefore, it is the opinion of this Office that the power to increase the tax millage to be levied for the operation of the Aiken County School District lies with the General Assembly, until it vests this power with another body or provides a procedure therefor. [Article XI, Section 3, South Carolina Constitution](#).

Sincerely,

James M. Holly
Assistant Attorney General

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