

1980 WL 120847 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 28, 1980

*1 Mr. Robert P. Lusk
Anderson County Attorney
Post Office Box 1286
Anderson, South Carolina 29622

Dear Bob:

You have requested an opinion of this office regarding taxation for compliance with the Education Finance Act (Finance Act), [§ 59-20-10, et seq., Code of Laws of South Carolina \(1976\)](#), as amended. Your specific questions are whether the Finance Act gives taxing authority to the school districts or whether the districts may request an additional tax levy from other local authorities.

The basis for your request is the requirement that districts progress annually in eliminating the difference between their current funding of the Finance Act's Defined Minimum Program and full funding of that program. [§ 59-20-40](#). A pertinent portion of the Finance Act reads as follows:

... each district shall increase its local effort annually by at least the amount required in this section or by five percent in real dollar terms, or shall increase its millage for the local share of expenditures under the foundation program by at least two and one-half mills. [emphasis added] [§ 59-20-40\(3\)\(b\) of the Code of Laws of South Carolina \(1976\)](#), as amended.

This provision seems to give districts three (3) options for meeting the funding requirements of the Finance Act, one of which is increasing their millage, but it grants districts no express powers of taxation. Such power could not be implied here if it would be repugnant to another statute. [Sutherland Statutory Construction](#), Vol. 2A § 55.04.

Various general and local laws expressly provide a number of different methods for taxation for the schools in the State and in Anderson County in particular. See [§ 4-9-70 of the Code](#); [§ 59-73-10, et seq.](#), of the Code; Act 312, Acts and Joint Resolutions of South Carolina, 1971; Act 1080 of 1966; and Act 868 of 1950.¹ A granting of taxing authority to school districts under the Finance Act would conflict with many provisions in this current scheme of taxation. Thus, such authority may not be implied here when the Finance Act gives no clear indication that it was to be conferred. See [Sutherland, supra](#).

Although the Finance Act gives the districts no taxing authority, the provision for districts' increasing their millage must certainly allow districts to request the increase of the local taxing authorities; however, the request would have to be treated consistently with the procedures for tax matters for those districts.

I regret the delay in this response to your request. If I can be of further assistance to you, please let me know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

¹ No opinion of this office is expressed as to how these provisions interrelate and apply to Anderson County schools.

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