ALAN WILSON
ATTORNEY GENERAL

November 24, 2015

Dr. George Yeldell, Chairman
McCormick County School District
8211 N. Mine Street
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Dear Dr. Yeldell and Mr. Callison:

Attorney General Alan Wilson has referred your letters dated July 31, 2015 and September 15, 2015, respectively, to the Opinions section for a response. The following is this Office's understanding of your questions and our opinion based on that understanding.

Issues (as presented in your letters)**:**

1) Is Act No. 472 of 1976 authorizing McCormick County Council to "increase or decrease [McCormick County School District's] budget as it deems necessary and proper" local legislation in violation of the Home Rule Act (Act No. 63 of 1973 amending Article VIII of the South Carolina Constitution)?;
2) To the extent that Act 472 of 1976 remains a lawful grant of authority to McCormick County Council, does the language of Act 472 limit County Council to increases and decreases in the aggregate amount, or does it allow County Council to also exercise a line-item veto over specific line items adopted by the District?;
3) Does S.C. Code § 4-9-70 remove County Council's authority over the District's budget above setting the current millage rate?

Law/Analysis:

By way of background, and as referenced in your letters, the Amendments to Article VIII of the South Carolina Constitution [known as the Home Rule Act amendments] passed pursuant to Act No. 63 of 1973 and became law on March 7, 1973. Our State Supreme Court issued the Knight v. Salisbury opinion in 1974, which struck down a law passed by the Legislature, concluding that the law in question was special legislation. Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974). Specifically the Court determined the Legislature lacked the authority to pass a local law specific to one county creating a recreation district commission and authorizing it to issue bonds. Id. While initially the Court allowed "transitional legislation" as an exception to the prohibition against specific laws for one county granted by the Home Rule Act (see Duncan v. York County, 267 S.C. 327, 228 S.E.2d 92 (1976)), that was limited to "one shot" legislation (see Van Fore v. Cooke, 273 S.C. 136, 255 S.E.2d 339 (1979)).

Please note Act No. 472 of 1976 authorizing McCormick County Council to increase or decrease McCormick County School District's budget as it deems necessary and proper was passed by the Legislature after the Knight case but before the Van Fore case. The Act was approved on February 13, 1976. The Duncan case was filed in the original jurisdiction of the South Carolina Supreme Court and

was decided in August of that same year, just after the legislative session would have ended.[1] During this same time, the Moye opinion was decided by our State Supreme Court. See Moye v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975). This Office stated in a previous opinion regarding Moye that "[a]lthough article VIII, section 7 prohibits the Legislature from enacting laws for a specific county, because the Legislature is charged with the duty to provide a system of public education, our Supreme Court ruled article VIII, section 7 does not prevent the Legislature from enacting legislation effecting particular school districts. Moye, 265 at 140, 217 S.E.2d at 36." Op. S.C. Att'y Gen., 2007 WL 2459759 (July 6, 2007). Quoting from Moye, and addressing Home Rule and the Knight case the Court stated that:

> The trial judge correctly reasoned that the Knight case was not applicable to school districts. Creation of different provisions for school districts does not impinge upon the 'home rule' amendment because public education is not the duty of the counties, but of the General Assembly. The General Assembly has not been mandated by any constitutional amendment to enact legislation to confer upon the counties the power to control the public school system. To the contrary, the command of new Article XI, Section 3, is 'The General Assembly shall provide for the maintenance and support of a system of free public schools.'
> We take judicial notice of the fact that many school districts throughout the State are parts of two or three counties, and, accordingly, it would be impossible for any one county to pass rules, regulations, or ordinances governing the school district.
> The contrast between Article XI and Article VIII should be obvious. In Article XI the General Assembly is charged with the duty to provide for a system of public education, whereas, in Article VIII the General Assembly is required to confer powers upon the counties so that they may carry out local functions. Moreover, a reading of Article XI, which deals specifically with public education, as a whole, in light of the historical background of public education in this State, and attempting to harmonize the entire Article and extract the impact of each section, it is clear that the provisions of Article VIII, which deal solely with local government, have no application to the matter currently before us.

Moye v. Caughman, 265 S.C. 140, 143-44, 217 S.E.2d 36, 37-38 (1975).

Let us now examine the Act in question. Act No. 472 of 1976 states:

No. 472

> **An Act To Amend Section 21-3550, Code of Laws of South Carolina, 1962, As Amended, Relating To The Board of Trustees Of School District No. 4 Of McCormick County, So As to Provide For the Election Of The Board; To Amend Act 186 Of 1971, Relating To The Annual Budget For School District No. 4, So As To Further Provide Therefor; And To Repeal Sections 21-3551 And 21-3571 Through 21-3574, Relating To The Educational System Of McCormick County, Which Are Now Obsolete.**
>
> Be it enacted by the General Assembly of the State of South Carolina:
> **SECTION 1. McCormick County School District 4 – trustees.**

[1] We presume.

--Section 21-3550 of the 1962 Code, as last amended by Act No. 466 of 1973, is further amended to read as follows:

"Section 21-3550. The County Board of Education of McCormick County is hereby constituted as the Board of Trustees of School District No. 4 of McCormick County, with all powers and duties prescribed by law for such board of trustees. The board shall consist of seven members to be elected in the general election commencing with the general election of 1976 for terms of four years and until their successors are elected and qualify except that of those first elected three shall serve for terms of two years only. The four members receiving the greatest number of votes shall serve for four years and those receiving the least number of votes shall serve for two years. If the members receive the same number of votes the length of terms shall be determined by lot.

In the event that candidates do not offer for any vacancies on the board the Governor shall appoint trustees to fill such vacancies upon the recommendation of the governing body of the county. All candidates shall be qualified electors of the county and shall file and qualify as candidates by written notice to the superintendent of schools post-marked at least fifteen days prior to the date of election. Any vacancy shall be filled for the unexpired portion of the term in the same manner provided for vacancies for full terms.

The board shall elect a chairman who shall serve for one year."

SECTION 2. Present members to continue to serve. – The present members of the board shall continue to serve until January 1, 1977, at which time the members first elected pursuant to this act shall take office.

SECTION 3. Budget – Section 1 of the Act 186 of 1971 is amended to read:

"Section 1. Notwithstanding any other provision of law, the budget for School District No. 4 in McCormick County shall be determined in the following manner:

(1) The board of trustees of the district shall initially prepare the budget after consultation with the various school officials of the county. Consideration shall be given to the overall needs of the district school system and the sources of revenue available, including federal, state and local funds to fund such budget.

(2) The budget of the trustees shall be submitted to the governing body of the county, no later than February first, for approval and the governing body may increase or decrease the budget as it deems necessary and proper.

(3) In any year in which the board of trustees determines that greater local financial assessment is essential and that the tax millage of the district should be increased in order to implement the budget, the board first shall notify the governing body of the county of the amount so required and the tax levy necessary to realize such amount and the governing body, if it approves, shall provide for the necessary tax levy.

(4) The board of trustees shall establish in its bookkeeping system entries for each item in the budget and shall maintain such records in a manner to accurately reflect the amounts appropriated, amounts drawn and the balance remaining in each account. Expenditures for budgeted items shall not exceed the amount appropriated and expenditures for unbudgeted items shall not be made unless approved in writing by a majority of the board of trustees. Violation of this section shall be cause for dismissal from employment or office by the Governor or by the board having jurisdiction over such employee or officer."

> **SECTION 4. Repeal.** – Sections 21-3551 and 21-3571 through 21-3574 of the 1962 Code are repealed.
> **SECTION 5. Time effective.** – This act shall take effect upon approval by the Governor.
> Approved the 13th day of February, 1976.

Act No. 472, 1976 S.C. Acts 1458-1460. To begin review of the Act No. 472, let us go to the end to examine Section 4. Section 4 repeals certain portions of the 1962 Code relating to McCormick County's superintendent of education and the election of school board trustees. The title of Act No. 472 of 1976 reads "...And To Repeal Sections 21-3551 And 21-3571 Through 21-3574, Relating To The Educational System Of McCormick County, Which Are Now Obsolete." 1976 S.C. Acts 472 (1458). As this Office has noted in prior opinions, ". . . the title or caption of an act may be properly considered to aid in the construction of a statute and to show the intent of the Legislature." Op. S.C. Att'y Gen., 2004 WL 2451474 (Oct. 15, 2004) (citing Lindsay v. Southern Farm Bureau Cas. Ins. Co., 258 S.C. 272, 188 S.E.2d 374 (1972)). South Carolina Code § 21-3551 granted the McCormick County superintendent of education an allowance for traveling. South Carolina Code § 21-3571 through § 21-3174 established election of school board trustees for School District No. 1 and authorized the county board of education to give notice of elections, accept applications, and fill vacancies. Thus, Section 4 of Act No. 472 repealed statutes authorizing the county board of education to supervise the election of trustees for School District No. 1. Act No. 472, 1976 S.C. Acts 1460.

The title of Act No. 472 of 1976 relating to Act No. 186 of 1971 reads "To Amend Act 186 Of 1971, Relating To The Annual Budget For School District No. 4, So As To Further Provide Therefore." Act No. 472, 1976 S.C. Acts 1458. Section 3 of Act No. 472 amends Act 186. Act No. 472, 1976 S.C. Acts 1459-1460. Act No. 186 of 1971 established the determination of McCormick County School District No. 4's budget to be submitted to the county board of education by the board of trustees of the district. Act No. 186, 1971 S.C. Acts 180. Act No. 186 of 1971 also required the board to notify and get the approval of the county legislative delegation for increases to the school district's budget. Id. Section 3 of Act No. 472 amending Act 186 of 1971 changed McCormick School District No. 4's budget to require approval by and opportunity for changes be done by the governing body of the county. Act No. 472, 1976 S.C. Acts 1459-1460; Act No. 186, 1971 S.C. Acts 180. Thus, Act No. 472 changed the approval power from the legislative delegation to county council.

The title of Act No. 472 of 1976 relating to Act No. 466 of 1973 reads "An Act To Amend Section 21-3550, Code Of Laws Of South Carolina, 1962, As Amended, Relating To The Board Of Trustees Of School District No. 4 Of McCormick County, So As To Provide For The Election Of The Board." Act No. 472, 1976 S.C. Acts 1458. Act No. 466 of 1973 abolished the office of superintendent of education and put the office on the duties of the county board of education, constituted the county board of education to consist of the board of trustees of School District No. 4 and authorized the appointment of the members of the county board of trustees to be appointed by the Governor upon the recommendation of the local legislators pursuant to S.C. Code § 21-101 (1962 Code, as amended). Act No. 466, 1973 S.C. Acts 813. However, while Act No. 466 of 1973 authorized the board of education to consist of the members of the county board of trustees, the Act did not eliminate the requirement of Act No. 186 of 1971 that the board of education must notify the legislative delegation to approve any increase in the school district's budget. Id.; Act No. 186, 1971 S.C. Acts 180. Section 1 of Act No. 472 of 1976 amended Act No. 466 of 1973 to have the board of trustees of School District No. 4 to be elected in a general election, as opposed to being appointed by Governor at the recommendation of the local

legislatures as they were pursuant to Act No. 466 of 1973. S.C. Code § 21-101 (1952 Code); Act No. 472, 1976 S.C. Acts 1458-1459; Act No. 466, 1973 S.C. Acts 813. Section 1 of Act No. 472 of 1976 also authorizes the Governor at the recommendation of the county governing body to appoint trustees when there is a vacancy, as opposed to the recommendation of the local legislatures as it was pursuant to Act No. 466 of 1973. Id.

Thus, having reviewed Act No. 472 of 1976, knowing it became effective on February 13, 1976, and understanding its effect was to transfer power to county council where it was in the hands of the local legislators[2], we believe a court in 1976 and a court today would determine Act No. 472 is lawful either as "transitional legislation" based on the Court's rulings in Duncan v. York County, 267 S.C. 327, 228 S.E.2d 92 (1976)) and Van Fore v. Cooke, 273 S.C. 136, 255 S.E.2d 339 (1979)) or as lawful legislation pursuant to General Assembly's authority to maintain and support a free public school system pursuant to Article XI, § 3 of the South Carolina Constitution, based on the Court's ruling in Moye v. Caughman. Moreover, the South Carolina Supreme Court has consistently chosen to prefer a constitutional interpretation over an unconstitutional one. In State v. 192 Coin-Operated Video Game Machines, the Court said "[a] possible constitutional construction must prevail over an unconstitutional interpretation." State v. 192 Coin-Operated Video Game Machines, 338 S.C. 176, 196, 525 S.E.2d 872, 883 (2000) (citing Henderson v. Evans, 268 S.C. 127, 132, 232 S.E.2d 331 (1977)). Furthermore, "[i]t is always to be presumed that the Legislature acted in good faith and within constitutional limits." Scroggie v. Scarborough, 162 S.C. 218, 160 S.E. 596, 601 (1931).

Regarding your second question as to whether Act 472 of 1976 limits County Council to increases and decreases in the aggregate amount or whether it allows County Council to also exercise a line-item veto over specific line items adopted by the District, we believe a court would find the amendment authorizes a line-item veto. As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)). Examining Section 3 of Act No. 472 of 1976, it states:

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[2] Please note for purposes of this opinion we are relying on the information given to us. There are numerous relevant statutes, cases, and statutory history, and we are not able to list all of them here. Moreover, we are basing "transitional legislation" on the intent to return power to the county council and remove it from the Legislature, which we believe a court will determine is consistent with the intent of the Home Rule Act.

> (2) The budget of the trustees shall be submitted to the governing body of the county, no later than February first, for approval and the governing body may increase or decrease the budget as it deems necessary and proper.
> (3) In any year in which the board of trustees determines that greater local financial assessment is essential and that the tax millage of the district should be increased in order to implement the budget, the board first shall notify the governing body of the county of the amount so required and the tax levy necessary to realize such amount and the governing body, if it approves, shall provide for the necessary tax levy.
> (4) The board of trustees shall establish in its bookkeeping system entries for each item in the budget and shall maintain such records in a manner to accurately reflect the amounts appropriated, amounts drawn and the balance remaining in each account. Expenditures for budgeted items shall not exceed the amount appropriated and expenditures for unbudgeted items shall not be made unless approved in writing by a majority of the board of trustees. Violation of this section shall be cause for dismissal from employment or office by the Governor or by the board having jurisdiction over such employee or officer.

Act No. 472, 1976 S.C. Acts 1459-1460. The plain language of Section 2 authorizes approval of the budget as well as budget increases and decreases. However, Section 4 expounds on the budget requirements in that the board of trustees is required to document the amount spent for each item listed in the budget. County Council's power to increase or decrease the budget comes only after its authorization to approve the budget. Id. Thus, reading the amendments to Act No. 186 of 1971 in Act No. 472 as a whole, we believe the intention to approve would include a line-item veto. To conclude otherwise would only require listing a monetary amount for the County to approve or disapprove without listing what the items were expended for. As our Court has previously stated, "[t]he well known maxim applicable to statutes, '*quanda lex aliquid concedit, concedere videtur et Id, per quod devenitur ad illud*'" or, as rendered by Chancellor Kent, 'whenever a power is given by a statute everything necessary to the making of it effectual or requisite to attain the end is implied,' is sufficient authority for this" would apply here. Glenn v. County Comm'rs of York, 6 S.C. 412, 428-29 (1873).

Regarding your third question as to whether South Carolin Code § 4-9-70 removes County Council's authority over the District's budget above setting the current millage rate, this Office has previously stated:

> The language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. S.C. Tax Commission, 292 S.C. 411, 357 S.E.2d 6 (1987). And where two statutes are in apparent conflict, they should be construed, if reasonably possible, to give force and effect to each. Stone & Clamp, General Contractors v. Holmes, 217 S.C. 203, 60 S.E.2d 231 (1950). This rule applies with peculiar force to statutes passed during the same legislative session, and as to such statutes, they must not be construed as inconsistent if they can reasonably be construed otherwise. State ex rel. S.C. Tax Commission v. Brown, 154 S.C. 55, 151 S.E. 218 (1930).

Op. S.C. Att'y Gen., 1988 WL 485345 (December 1, 1988). Let us review South Carolina Code § 4-9-70 of the 1976 Code of laws (as amended). South Carolina Code § 4-9-70 of the 1976 Code was originally in identical language in the 1962 Code of Laws (as amended) in § 14-3704. The Home Rule Act amendments became effective on March 7, 1973, and our State Supreme Court has determined that § 4-9-70 is a part of the Home Rule Act, even though § 4-9-70 became effective in 1975. Burriss v. Anderson County Bd. of Educ., 369 S.C. 443, 633 S.E.2d 482 (2006). One of your letters indicates that the school district believes § 4-9-70 was effective on July 1, 1976 and that "it appears that the statute leaves the Council with no authority over the District budget above setting the current millage rate." We disagree and believe that a court will too. Since both § 14-3704 and § 4-9-70 are the same, there is no question that the statute already existed before Act No. 472 of 1976. Quoting from Burriss, our Supreme Court stated:

> By enacting § 4–9–70, the General Assembly attempted to insure that the taxing power for all school districts would be properly vested in some authority. The clear intent is to vest the power to determine the school tax levy in county council in all cases where it is not vested elsewhere.

Burriss v. Anderson County Bd. of Educ., 369 S.C. 443, 460, 633 S.E.2d 482, 491 (2006) (quoting Stone v. Traynham, 278 S.C. 407, 410, 297 S.E.2d 420, 422 (1982)). As we quoted above, "[i]t is always to be presumed that the Legislature acted in good faith and within constitutional limits." Scroggie v. Scarborough, 162 S.C. 218, 160 S.E. 596, 601 (1931). Thus, we begin again with the presumptions that Acts No. 186 of 1971, No. 466 of 1973 and No. 472 of 1976 are all constitutional and do not conflict with existing law. We still believe a court will determine Act No. 472 of 1976 would be lawful either as "transitional legislation" as it transferred power from the county legislators to the county government or lawful pursuant to the General Assembly's constitutional authority to maintain and support public schools in South Carolina. Moreover, in spite of the concern expressed in one of your letters, we do not see any conflict with Act No. 472 of 1976 and S.C. Code §§ 59-19-10, 59-19-90, 59-19-125 and 59-19-250 as those statutes all authorize the board of trustees to act (selling or leasing property) and otherwise performing its duties. None of those statutes authorize the school board of trustees to approve its own budget or otherwise conflict with Act No. 472 of 1976 as we interpret it.

Conclusion:

In conclusion, this Office believes a court will conclude that Act No. 472 of 1976 authorizing McCormick County Council to "increase or decrease [McCormick County School District's] budget as it deems necessary and proper" was passed lawfully either under the auspice of "transitional legislation" in that its intent and effect was to return power to McCormick county government or lawfully pursuant to the General Assembly's authority to maintain and support a free public school system pursuant to Article XI, § 3 of the South Carolina Constitution. Therefore, we believe a court would determine that such legislation was lawful at the time it was passed and would authorize county council to approve and change the proposed budget of the school district by line-item. However, this Office is only issuing a legal opinion based on the current law at this time. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
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