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ATTORNEY GENERAL

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Dear Ms. Heizer:

We have received your letter requesting an opinion on behalf of your client, the Fort Mill School District No. 4 of York County (the "School District"), concerning the correct method to determine the permitted operating millage increase for the School District in each fiscal year. Specifically, you ask whether the relevant portions of Act No. 388 of 2006 and Act No. 57 of 2007, codified at S.C. Code Ann. §§ 6-1-320(A) and 6-1-320(E), have effectively repealed Act No. 744 of 1990, local legislation capping the School District's annual millage increase at six mills unless a higher amount is approved by referendum. Our analysis follows.

Background

To place your question into context, it is necessary to point out the applicable statutory provisions as well as a circuit court decision issued by the Honorable John C. Few to which your questions relate. S.C. Code Ann. § 6-1-320 (Supp. 2015) contains a limitation imposed on local governing bodies as to allowable yearly increases in operating millage. Subsection (A) sets forth a formula for determining the amount a local governing body is authorized to increase its millage rate for general operating purposes above the rate imposed for such purposes for the preceding tax year. S.C. Code Ann. § 6-1-320(A) (Supp. 2015). Specifically, the rate can only be increased "to the extent of the increase in the average of the twelve monthly consumer price indices for the most recent twelve-month period . . . plus . . . the percentage increase in the previous year in the population of the entity. . . ." Id.

While this limitation applies to "local governing bodies," which includes "the body authorized by law to levy school taxes,[1]" subsection (E) of Section 6-1-320 provides that the article cannot be construed to "amend or repeal" any caps on school millage "more restrictive" than the limitation provided in subsection (A). S.C. Code Ann. § 6-1-320(E) (Supp. 2015). In its entirety, subsection (E) provides as follows:

[1] See S.C. Code Ann. § 6-1-300(3) (2004 & Supp. 2015) (" 'Local governing body' means the governing body of a county, municipality, or special purpose district. As used in Section 6-1-320 only, local governing body also refers to the body authorized by law to levy school taxes.")

> [n]otwithstanding any provision contained in this article, this article does not and may not be construed to amend or to repeal the rights of a legislative delegation to set or restrict school district millage, and this article does not and may not be construed to amend or to repeal any caps on school millage provided by current law or statute or limitation on the fiscal autonomy of a school district that are *more restrictive* than the limit provided pursuant to subsection (A) of this section.

Id. (emphasis added).

We note that the limitations on millage increases imposed on local governing bodies were revised by Act 388 as part of comprehensive, statewide changes in sales and property tax laws. See Act No. 388, 2006 S.C. Acts 3143-45. While Act 388 amended subsection (A), no amendments were made to subsection (E). Subsequently, Sections 3-1-320(A) and (E) were both amended by Act 57 of 2007. See Act No. 57, 2007 S.C. Acts 189-90. Act 57 added a provision within Subsection (A) to clarify that "[i]f the average of the twelve monthly consumer price indices experiences a negative percentage, the average is deemed to be zero. If an entity experiences a reduction in population, the percentage change in population is deemed to be zero." Id. at 189. As to Subsection (E), the stricken and underlined material below indicates the amendments made by Act 57:

> [n]otwithstanding any provision contained ~~herein~~ in this article, this article does not and may not be construed to amend or to repeal the rights of a legislative delegation to set or restrict school district millage, and this article does not and may not be construed to amend or to repeal any caps on school millage provided by current law or statute or limitation on the fiscal autonomy of a school district ~~as currently in existing law~~ that are more restrictive than the limit provided pursuant to subsection (A) of this section.

Compare Act No. 388, 2006 S.C. Acts 3145 with Act No. 57, 2007 S.C. Acts 189-90.

As a result of the amendments made to Sections 6-1-320(A) and (E), the School District of Greenville County sought a declaratory judgment from the Thirteenth Judicial Circuit Court concerning the construction of Sections 6-1-320(A) and (E) and Act 602 of 1992, local legislation pertaining to the Greenville County School District devising a formula to determine the extent of allowable millage increases, capping the increase to 4 mills, and also providing that additional mills can be approved by referendum.[2] Specifically at issue was whether the District's

[2] See Act No. 602, 1992 S.C. Acts 3634-65 (stating in part, the formula in subsection (C) and the millage cap in subsection (D): "(C) For a given fiscal year the board may increase millage to raise funds based on the prior year's consumer price index for the southeast published by the United States Department of Labor as reported by the State Budget and Control Board as it applies to the amount of the budget in the prior fiscal year, plus the amount required to fund new unfunded federal and state mandates, plus the amount of reductions in federal and state monies not accompanied by corresponding program cuts, and minus new total anticipated income from all sources available to the district. Errors in projected income must be taken into consideration in the next year's funding calculations. For purposes of this subsection, reductions in federal and state monies means actual reductions in total federal and state funds to be received by the district in the prior fiscal year. Thus subsection does not restrict the total budget of the district. (D) The board may increase the budget to the amount necessary to raise revenue to the level of combined mandates, reductions, and inflation, not to exceed four mills in any one year. If the board finds it necessary to

permitted millage rate increase, as calculated pursuant to Act 602 of 1992, was "more restrictive" than the limit provided in 6-1-320(A). In an opinion issued by the Honorable John C. Few (the "Greenville Decision"), the court found that Section 6-1-320(A) was more restrictive than Act 602(D). The Sch. Dist. of Greenville County v. The Greenville County Auditor, No. 2008-CP-23-3132 (Greenville, S.C. Cir. Ct., Sept. 9, 2008).

In its ruling, the court first pointed out that the Section 6-1-320(A)'s formula for determining the maximum allowable operating property tax millage increase for each fiscal year was an "extremely definite method" and that the "inflation and population factors are precisely defined and determined by the State. . . ." Id. at 12. In contrast, it provided that the formula contained in Act 602 was "complex" "involving many discretionary determinations relative to inflation, unfunded state and federal mandates, reductions in federal and state funds, and increases in new funds." Id. The Greenville Decision also indicated that Act 602's formula, as stated in the Act, " 'does not restrict the total budget of the district' " as it can raise the rate up to four mills. Id. (quoting Act No. 602(C), 1992 S.C. Acts 3634).

In regards to the four mill cap provided by Act 602, the court provided as follows:

> [i]n any year in which the "extent of the increase in the average of the twelve monthly consumer price indices ... plus ... the percentage increase in a previous year in the population" per § 6-1-320(A) results in a general law cap of less than four mills for the School District, Act 602(D) is clearly not "more restrictive" because the special act allows for the School District not only to maintain its rate to fund its budget (Act 602(B)) but, in accordance with Act 602(C), to raise the rate up to four mills as a result of the formula.

Id. (quoting S.C. Code Ann. § 6-1-320(A)).

Furthermore, the court emphasized that because the Section 6-1-320(A) formula could be zero if an entity experiences a reduction in population, "Act 602(D) cannot, as a matter of law, be 'more restrictive' than the normal operations millage limitation of § 6-1-320(A)." Id. at 13. It also rationalized that Section 6-1-320 is still more restrictive than Act 602 even when the 6-1-320(A) formula produces a result above the four mill cap being that Act 602 permits unlimited millage increase with voter approval by referendum. Id. Therefore, concluding that Act 602 was not "more restrictive," than Section 6-1-320(A) and could not be reconciled with Section 6-1-320 as amended by Acts 388 and 57, the court found that Section 6-1-320(E) repealed Act 602(D). Id. at 15 ("The Court concludes that Act 602(D) cannot be reconciled with § 6-1-320 as amended by Acts 388 and 57. The General Assembly clearly intended the 'more restrictive' caps on school millage or other limitations on fiscal autonomy of the School District to survive, alone. Act 602(D) therefore is repealed by the Act 388 and Act 57 revisions of § 6-1-320").

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increase the budget beyond the limits prescribed in this subsection, it shall submit the question to the qualified electors of the district by referendum.").

In light of the Greenville Decision, you ask for our opinion regarding its reasoning being that adoption could yield a higher millage increase limit for the School District. You provide as follows:

> [b]ecause the Circuit Court's Order in the Greenville Decision was not appealed, the School District is not comfortable relaying upon its outcome. It is, however, an important issue for the School District because it is one of the most rapidly growing school districts in the state. It is possible that in the future the millage calculations under § 6-1-320(A) will result in a higher millage increase than the six mills provided in Act 744. If the analysis in the Greenville Decision is accurate, then Act 744 has been effectively repealed by Act 388 and Act 57 and the School District may rely upon § 6-1-320(A).

Law / Analysis

Act No. 744 of 1990 ("Act 744") provides that any school district in York County is limited to an increase of six mills to be imposed for school operations:

> [t]he four-mill limitation as provided by law which allows the board of trustees of any school district of York County to increase the millage levied for school operating purposes of the district by not more than four mills in any year over that levied for the preceding year without the approval of the qualified electors of the district in a referendum is hereby increased to six mills . . . .

Act No. 744, 1990 S.C. Acts 3520. While Act 744 does not contain a formula like Greenville County's Act 602(C) to determine the extent of allowable millage increases, like Act 602(D), it provides a millage cap and permits additional mills to be approved by referendum. Therefore, identical to the issues addressed by the Greenville Decision, it is necessary to determine whether the limitation imposed by Act 744 is "more restrictive" than the limit provided in Section 6-1-320(A), when construing Section 6-1-320(E). If the millage cap imposed by Act 744 is "more restrictive" than the limit imposed by Section 6-1-320(A), Section 6-1-320 "may not be construed to amend or repeal" such cap on school millage.

The phrase "more restrictive" is not defined within Section 6-1-320 or, to our knowledge, by any other code provisions. Therefore, we must employ the rules of statutory construction. See Berkeley County Sch. Dist. v. South Carolina Dep't of Revenue, 383 S.C. 334, 345, 679 S.E.2d 913, 918 (2009) (noting that because the statutory term "property tax for school operating purposes" was not defined, the court "must employ the rules of statutory construction"). Of course, the cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Furthermore, the legislature's intent should be ascertained primarily from the plain language of the statute. State v. Morgan, 352 S.C. 359, 366, 574 S.E.2d 203, 206 (Ct. App. 2002). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. Id.

When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning. Branch v. City of Myrtle Beach, 340 S.C. 405, 409-10, 532 S.E.2d 289, 292 (2000). Courts should consider not merely the language of the particular clause being construed, but the undefined word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. Id. at 410, 532 S.E.2d at 292.

Important to this opinion, we also point out that "[t]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." Brown v. South Carolina Dep't of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002). Like a court, this Office gives deference to an administrative agency's interpretation of an applicable statute or its own regulation. See, e.g., Op. S.C. Att'y Gen., 2009 WL 1266924 (April 1, 2009) (citing Brown v. Bi-Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003)); Op. S.C. Att'y Gen., 1999 WL 1425994 (Oct. 27, 1999). In fact, as acknowledged in our October 27, 1999 opinion "[i]t is the policy of this Office not to issue an opinion if another agency which has jurisdiction over the matter has already ruled or advised on the matter." Op. S.C. Att'y Gen., 2009 WL 1425994 (Oct. 17, 1999); see also Op. S.C. Att'y Gen., 1987 WL 342674 (June 5, 1987) ("Because the agency charged with interpretation of the relevant law has already made the determination which you are in effect seeking, office policy precludes our attempting to supersede the administrative authority. . . .").

Relying on the "plain language used" in Section 6-1-320(E) as well as "the clear intent expressed by the General Assembly" the South Carolina Department of Revenue (the "DOR") issued a Determination on the exact issue addressed by Judge Few in the Greenville Decision discussed above. South Carolina Dep't of Revenue Determination 2007-1. It concluded that "in setting the millage for the Greenville County School District, the Greenville County Auditor is limited to an increase in millage that is the lower of the increase allowed by Section 6-1-320 or the increase allowed by Act 602." Id. at 3. In reaching this conclusion, the DOR, reasoned that:

> [g]iven such language [of 6-1-320(E)], the restrictions of Act 602 have not been amended or repealed by the Property Tax Reform Act of 2006 so long as Act 602 is more restrictive than Section 6-1-320(A). Thus, the plain language used as well as the clear intent expressed by the General Assembly requires a millage based upon the lower of the two limits set by 6-1-320 and Act 602.

Id. Thus, DOR has construed 6-1-320(E)'s "more restrictive" language as meaning the greater limitation imposed upon calculating the millage increase permitted under 6-1-320(A) and Act 602 on an annual basis.

While we are bound to this interpretation, we believe that the DOR's construction of "more restrictive" comports with plain meaning of the term. To explain, the word "restriction" is defined as a "[a] limitation or qualification." Black's Law Dictionary 1341 (8th ed. 2004); see also American Heritage College Dictionary 1164 (3rd ed. 1993) (defining "restrict" as "[t]o keep or confine within limits"). Therefore, it follows that "more restrictive" would mean the greater limitation. In line with the plain meaning of the term, we fail to see how the "more restrictive"

limitation could be determined without comparing the millage limitation imposed by Section 6-1-320 and a millage cap imposed on school millage set by law or statute. In other words, the plain meaning of the phrase "more restrictive" would require two points of comparison that would be most logically derived, we believe, from calculating the millage pursuant to both methods. Accordingly, we believe a court would find the DOR's interpretation of the term "more restrictive" based upon the term's plain meaning is consistent with the rules of statutory construction referenced above, and most importantly, in line with the legislature's intent to apply the more restrictive millage limitation. This is especially apparent when acknowledging that application of Section 6-1-320 alone, without comparing the limit to a millage cap imposed by other law, could result in a higher millage increase than a millage cap such as the six mills provided in Act 744.

We do recognize, however, that the DOR's interpretation was rejected in the Greenville Decision, and is therefore subject to challenge. The Greenville Decision reasoned that the DOR's interpretation was forced, being that it ignored the "amend or repeal" language used in Section 6-1-320(E). The Sch. Dist. of Greenville County v. The Greenville County Auditor, No. 2008-CP-23-3132, 15 (Greenville, S.C. Cir. Ct., Sept. 9, 2008). Specifically, the Greenville Decision provided as follows:

> Department of Revenue Determination 2007-1 suggests that an annual determination should be made to determine whether Act 602(D) or § 6-1-320(A) would result in a greater restriction on the School District's millage increase. This construction ignores the plain meaning of § 6-1-320(E)'s terms "amend or repeal." A provision of law cannot be repealed and then unrepealed by the same statute; either one millage increase limitation or the other must be in force. Only an improperly forced and strained construction of § 6-1-320(E) would permit annual post hoc determinations of the applicable millage limitation. "We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000).

Id.

Despite the conclusions reached in the Greenville Decision, until a binding decision determines otherwise, Office policy restricts us to adhere to the statutory interpretation of the DOR. Therefore, while we are aware that the conclusions reached by the DOR are subject to challenge, we defer to the interpretation of the DOR that Section 6-1-320(E)'s "more restrictive" language should be construed as meaning the greater limitation imposed by either Section 6-1-320(A) or a cap on school millage provided by current law or statute. While we are bound to the DOR's interpretation regardless, we do believe this interpretation is consistent with the rules of statutory construction referenced above, and most importantly, in line with the legislature's intent to apply the more restrictive millage limitation. Therefore, we believe the School District is limited to an increase in millage that is the lower of the increase allowed by Section 6-1-320 or the increase allowed by Act 744.

Conclusion

Based on the analysis above, this Office concurs with the conclusion reached by the South Carolina Department of Revenue that Section 6-1-320(E)'s "more restrictive" language should be construed as meaning the greater limitation imposed by either Section 6-1-320 or an applicable cap on school millage provided by current law or statute. Therefore, the Fort Mill School District No. 4 of York County would be limited to an increase in millage that is the lower of the increase allowed by Section 6-1-320 or the increase allowed by Act 744.

Very truly yours,

Anne Marie Crosswell
Assistant Attorney General

REVIEWED AND APPROVED BY:

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