

1978 S.C. Op. Atty. Gen. 77 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-52, 1978 WL 22534

Office of the Attorney General

State of South Carolina

Opinion No. 78-52

March 17, 1978

**\*1 SUBJECT: School Districts; County Government**

Richland County Council, pursuant to [S.C. Code Ann. § 4-9-70 \(1976\)](#) may consider surplus or unappropriated school funds from prior fiscal years when establishing a school tax millage for Richland County School District No. 2.

TO: E. Rabon Rodgers  
Assistant Superintendent  
Richland County School District No. 2

**QUESTION:**

Does Richland County Council have legal authority to establish a school tax millage for a fiscal year utilizing surplus or unappropriated school funds from the previous fiscal year?

**STATUTES AND CASES:**

55 STAT. Act No. 3 (1967);

[S.C. Code Ann. § 4-9-70 \(1976\)](#);

[S.C. Code Ann. § 59-69-250 \(1976\)](#);

[Grey v. Vaigneur](#), 243 S.C. 604, 135 S.E.2d 227 (1962);

[Parker v. Bates](#), 216 S.C. 52, 56 S.E.2d 723 (1949);

84 C.J.S. Taxation § 361 (1954).

**DISCUSSION:**

The Richland County Council has implemented by ordinance a budgetary plan whereby all surplus or unappropriated funds for the previous fiscal year are placed in an escrow account, and are subsequently applied to the county agency budget request for the subsequent fiscal year, in effect reducing the necessary tax millage in the subsequent fiscal year. Because Richland County Council establishes the tax millage for the Richland County School District No. 2, surplus or unappropriated school funds for District No. 2 are treated in the same fashion as surplus funds of county agencies.

The general principle of law in this state is that the county and the school district are separate and distinct governmental, corporate entities. Each are subject to separate constitutional and statutory provisions. See [Grey vs. Vaigneur](#), 243 S.C. 604, 135 S.E.2d 227 (1962).

The 'Home Rule' constitutional provisions, and the legislation enacted thereunder, specifically incorporate this relationship into the statutory law. See [S.C. Code Ann. § 4-9-70 \(1976\)](#). Nonetheless, 'Home Rule' legislation provides that if the County Council, rather than the General Assembly or the board of trustees of the school district, established the school tax millage prior to certain dates listed in the statute, this practice should continue. Because Richland County Council has been establishing the school tax millage since 1967 under the authority delegated to them by the General Assembly in 55 STAT. Act No. 3 (1967), the County Council continues to perform this function under [§ 4-9-70](#).

The language contained in [§ 4-9-70](#) provides that the 'County Council shall determine by ordinance the method of establishing a school tax millage'. This language is broad and does not prescribe methods which County Council must use in determining the school tax millage. Therefore, some discretion on council's part is permissible and necessary.

There are no statutes or constitutional provisions presently in force which require that the entire amount of a tax levy collected for school purposes, even though in excess of the school board's requirements, must be paid over to the school board in the fiscal year in which it was collected. To the contrary, the statutory scheme relating generally to school funds states in [S.C. Code Ann. § 59-69-250 \(1976\)](#):

\*2 The County treasurer shall carry forward all sums in his hands collected for any previous year or years for school purposes and unexpended to the next fiscal year and credit the same to the school districts respectively, for which they were apportioned. He shall report such sums to the county superintendent of education.

Similarly, there appear to be no constitutional or statutory provision which are applicable in this case prohibiting application of such surplus funds against the next year's school budget. In the absence of constitutional or statutory provisions, the general rule of law is that 'the levying board, provided it uses sound business judgment, may exercise reasonable discretion in determining what amount or rate of taxes shall be raised for any general or particular purpose; and in determining such amount it should consider and deduct funds on hand which are available and applicable to the purpose or purposes for which the tax is being levied.' 84 C.J.S., Taxation § 361 (1954).

Of course, it would be impermissible to divert a surplus to any cause other than that for which the tax was originally levied. See [Parker vs. Bates](#), 216 S.C. 52, 56 S.E.2d 723 (1949). However, it is our opinion that the carrying forward of the surplus school funds to use in a subsequent fiscal year for school purposes does not constitute such an impermissible diversion.

#### CONCLUSION:

It is the opinion of this office that the Richland County Council may consider surplus or unappropriated school funds from prior fiscal years when establishing a school tax millage for Richland County School District No. 2.

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