ALAN WILSON
ATTORNEY GENERAL

March 29, 2019

Andrea E. White, Esq.
Counsel, Abbeville County School District
White & Story, LLC
P.O. Box 7036

Columbia, SC 29204

Dear Ms. White:

Attorney General Alan Wilson has referred your letter to the Opinions section. The request letter reads as follows:

> This firm serves as general counsel to the Abbeville County School District ("the District"). At its meeting on January 22, 2019, the District's Board of Trustees ("the Board") voted to authorize me to seek an opinion from your office as to the District's obligations based on the facts set forth below.
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> Pursuant to Act 755 of 1988, the Board, as the local governing body of the District, is authorized to "levy annually upon all taxable property in the District a tax in order to meet the cost of operating and maintaining the district during each fiscal year." Act 755 continues to state that, if the budget adopted by the Board for a fiscal year requires the imposition of operational millage in excess of that imposed for the preceding fiscal year, the millage is to be approved by the Abbeville County Council, with the Abbeville County Auditor having the responsibility to "levy millage necessary to raise sufficient ad valorem taxes to defray the costs of the District's budget."
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> In 1997, the General Assembly passed Act 138, codified in SC Code Ann. § 6-1-300, et seq., which places a limit on a local governing body's ability to increase millage for general operating purposes from the amount imposed in the prior year. Specifically, § 6-1-320(A)(1) sets forth the formula a governing body must use when calculating increases in the millage rate on a year to year basis. However, for years in which the property being taxed has been reassessed, the

local governing body is required to use the "millage rollback" formula set forth in S.C. Code Ann. § 12-37-251(E).

In calculating the general operating millage rate for tax year 2017, the District was unaware that a reassessment had occurred in Abbeville County because the County Auditor did not so indicate when she informed the District's Director of Finance of the assessed value of all taxable property in the County. As a result, in calculating the amount of monies and corresponding millage necessary to fund the District's 2017-18 budget, the Director of Finance used the non-reassessment year formula found in § 6-l-320(A)(l), rather than the rollback formula set forth in § 12-37-251(E). This resulted in the District relying on an incorrect millage rate in funding its operating budget, potentially exceeding the millage rate increase limit imposed by S.C. Code Ann. §6-1-320(A)(2) & (B).

When the District learned in June 2018 that it had used the incorrect formula to determine millage, the Director of Finance contacted the Abbeville County Auditor to determine whether the error could be reviewed and rectified by the County. Because the District does not send out tax bills or collect tax revenues, the District has no means of determining whether certain tax payers in the County may be entitled to a refund as a result of the inadvertent use of the incorrect formula. In response, the Auditor advised that she did not have the capability to determine whether overpayments had occurred and, if so, the amount of any refund that taxpayers may be owed.

South Carolina Code Ann. Section 12-43-285 appears to address a situation such as this, stating that, if a millage rate in excess of that authorized by law is used to calculate taxes in a given year, the "county treasurer shall either issue refunds or transfer the total amount in excess of that authorized by law, upon collection, to a separate segregated fund, which must be credited to taxpayers in the following year as instructed by the governing body of the political subdivision on whose behalf the millage was levied." Section 12-43-285 continues to provide that "an entity submitting a millage rate in excess of that authorized by law shall pay the costs of implementing this subsection...."

Given that the County Auditor has advised the District that she does not have the ability to determine the identity of those taxpayers who may have overpaid and the amount that any such taxpayers are owed, does the District have any further responsibility to rectify this situation? If so, what steps should the District take in accordance with § 12-43-285? Finally, if the Abbeville County Treasurer follows through with what appears to be the obligations imposed by § 12-43-285(B), does the District have an obligation to pay the costs of

implementing the refund/transfer process, given that the County Auditor did not notify the District of the 2017 reassessment?

**Law/Analysis**

It is this Office's opinion that S.C. Code Ann. § 12-43-285(B) imposes liability on an entity at the time that it certifies in writing a "millage rate in excess of that authorized by law" to its county auditor. This Office has identified one case which addresses Section 12-43-285 in terms of the administrative process that tax payers must follow before they may pursue a claim regarding excess millage in the state court system.[1] However, this Office has not located any case which addresses a certifying entity's liability after submitting an excessive millage. Therefore, in order to respond to the issues raised in your letter, this opinion will analyze Section 12-43-285 according to the rules of statutory interpretation.

Statutory interpretation of the South Carolina Code of Laws requires a determination of the General Assembly's intent. Mitchell v. City of Greenville, 411 S.C. 632, 634, 770 S.E.2d 391, 392 (2015) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible."). Where a statute's language is plain and unambiguous, "the text of a statute is considered the best evidence of the legislative intent or will." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design, and policy of lawmakers." State v. Henkel, 413 S.C. 9, 14, 774 S.E.2d 458, 461 (2015), *reh'g denied* (Aug. 5, 2015). With these principles in mind, the opinion will next examine the text of S.C. Code Ann. § 12-43-285. The statute reads as follows:

> (A) The governing body of a political subdivision on whose behalf a property tax is billed by the county auditor shall certify in writing to the county auditor that the millage rate levied is in compliance with laws limiting the millage rate imposed by that political subdivision.
>
> (B) If a millage rate is in excess of that authorized by law, the county treasurer shall either issue refunds or transfer the total amount in excess of that authorized by law, upon collection, to a separate, segregated fund, which must be credited to taxpayers in the following year as instructed by the governing body of the political subdivision on whose behalf the millage was levied. An entity submitting

[1] See B & A Dev., Inc. v. Georgetown Cnty., 372 S.C. 261, 641 S.E.2d 888 (2007) (The Court found that S.C. Code Ann. § 12-43-285 "clearly applied" to tax payers' claim that a county had imposed an excessive millage rate and that tax payers must exhaust the administrative remedy requirements of the South Carolina Revenue Procedures Act, S.C. Code Ann. §§ 12–60–10 to -3390, before pursuing a claim in the state courts.).

> a millage rate in excess of that authorized by law shall pay the costs of implementing this subsection or a pro rata share of the costs if more than one entity submits an excessive millage rate.

S.C. Code Ann. § 12-43-285. Subsection (A) directs the governing body of a political subdivision to provide written certification to the county auditor that the millage rate levied complies with legal limits. Subsection (B) explains the consequences of certifying a millage rate which exceeds a legal rate. The first sentence of subsection (B) places alternative duties on the county treasurer to either issue refunds or transfer funds in the amount of the excess millage to a segregated fund to be credited to taxpayers in the following year. The plain language of the statute does not prefer one option to the other and appears to leave this choice to the county treasurer's discretion. Id. While this determination is left to the county treasurer's discretion, the duty to make the choice between the two options appears to be mandatory based on the statute's use of the word "shall." Id.; see also S.C. Police Officers Ret. Sys. v. City of Spartanburg, 301 S.C. 188, 391 S.E.2d 239 (1990) ("shall" and "must" are considered mandatory words according to principles of statutory construction); S.C. Dep't of Highways & Pub. Transp. v. Dickinson, 288 S.C. 189, 191, 341 S.E.2d 134, 135 (1986) ("Ordinarily, the use of the word 'shall' in a statute means that the action referred to is mandatory."). The second sentence of subsection (B) provides that an entity which submits an excessive millage rate pays the "costs of implementing this subsection" with those costs being prorated if multiple entities submitted excessive millage rates. This Office has not found a case interpreting "the costs of implementing this subsection." By contrast, in other statutes, the General Assembly has stated with more precise language when it intends costs to include attorney's fees or to mean costs related to administrative or judicial hearings. See S.C. Code Ann. § 62-7-1004 ("[T]he court, as justice and equity may require, may award costs and expenses, including reasonable attorney's fees, to any party..."). Due to the structure of subsection (B) and that its reference to costs is modified by the phrase "implementing this subsection," it is this Office's opinion that a court would likely find the General Assembly intended the costs borne by an entity that certified an excessive millage to consist of the costs of either option the county treasurer selects to address the excessive millage.

Section 12-43-285 does not address how an entity that certifies an excessive millage rate may limit its liability for the costs related to the county treasurer's refund process or segregated fund after it submits it in writing to the county auditor. The request letter states the District attempted to correct the excessive millage rate with the county auditor as soon as the error was discovered. Certainly, this is a reasonable step to potentially limit the impact to taxpayers and minimize the cost of correction actions. Similarly, notifying the county treasurer would be appropriate because he is charged with acting to address the excessive millage. While notifying the county auditor and county treasurer when an entity determines it certified an excessive millage could mitigate the costs associated with certifying an excessive millage, Section 12-43-285 does not expressly or impliedly limit the certifying entity's liability for costs. This Office

cannot say whether other legal theories may be applicable to apportion liability between the county and the District because the answer to such a question would require a factual determination, which is beyond the scope of our opinions. See Op. S.C. Att'y Gen., 1989 WL 508567, at *4 (July 17, 1989) (Fact-finding is beyond the scope of an opinion and is more appropriately reserved to "the province of the courts.").

**Conclusion**

It is this Office's opinion that S.C. Code Ann. § 12-43-285(B) imposes liability on an entity at the time that it certifies in writing a "millage rate in excess of that authorized by law" to its county auditor. Due to the structure of subsection (B) and that its reference to costs is modified by the phrase "implementing this subsection," it is this Office's opinion that a court would likely find the legislature intended the costs borne by an entity that certified an excessive millage to consist of the costs of either option the county treasurer selects to address the excessive millage. Section 12-43-285 does not address how an entity that certifies an excessive millage rate may limit its liability for the costs related to the county treasurer's refund process or segregated fund after it submits it in writing to the county auditor. This Office cannot comment on whether other legal theories may be applicable to apportion liability between the county and the District because the answer to such a question would require a factual determination, which is beyond the scope of our opinions.

Sincerely,

Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General