ALAN WILSON
ATTORNEY GENERAL

February 25, 2020

The Honorable Edward R. Tallon
Member
South Carolina House of Representatives
140 Bagwell Farm Road
Spartanburg, South Carolina 29302

Dear Representative Tallon:

We received your letter requesting an opinion of this Office on several issues relating to the imposition of property taxes used to fund Spartanburg County Schools. By way of background, you informed us that in 1963, the Legislature adopted local legislation establishing the "minimum county foundation." To "ensure the minimum foundation money was collected and distributed on a fair and equitable basis; and to ensure a common teacher salary schedule throughout the seven school districts of the county." You state: "Section 21-4022 of the local legislation provides a 'minimum of two hundred and twenty five dollars per pupil' and 'levied a thirteen-mill tax to be applied uniformly to all property in the county to guarantee a minimum foundation program of public school education to all children in the county.'"

You also provided us with the following information:

> In addition, as amended in local legislation the Spartanburg County Board of Education was abolished and all of its powers and duties were devolved upon the seven boards of trustees of the local school districts of Spartanburg County. Each of the seven boards of trustees of Spartanburg County have total fiscal autonomy. The local legislation established the Spartanburg County Education Oversight Committee, comprised of the chairperson of the board of trustees of each of the seven school districts of Spartanburg County, ex officio. The Chairman of the Oversight Committee serves on a one-year rotational basis in accordance with the rules as determined by the Oversight Committee.
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> Currently, the Oversight Committee meets annually and approves the distribution of the minimum county foundation. As provided in Act 388 owner-occupied residential property is exempt from the thirteen-mill tax

although the amount calculated in 2007-2008 for exempt owner-occupied residential property which reimbursed school districts for the exempt property did not include the thirteen-mill minimum county foundation. The millage rate provided in the local legislation of thirteen-mills has previously not been subject to the annual adjustment permitted by Act 388 (CPI plus population growth).

With this information in mind, you ask us the following questions:

1. Does the Act 388 growth limit of CPI and population growth apply to the thirteen-mill minimum county foundation imposed by the local legislation?

2. If CPI and population growth are not applicable to the thirteen-mill minimum county foundation, does the exemption of owner-occupied residential property apply to the thirteen-mill minimum county foundation?

3. Do the powers provided by the local legislation and now vested in the seven board of trustees of the local Spartanburg County school districts provide the authority of the Oversight Committee increase millage by CPI and population growth as provided in Act 388?

    a. If the Oversight Committee does not have the power to approve an increase of the thirteen-mill minimum county foundation by CPI and population growth, do each of the seven school boards of trustees have the authority to vote to increase the thirteen-mill minimum foundation by CPI and population growth?

4. If the minimum of two hundred and twenty five dollars per pupil is not funded for each child, does the Oversight Committee or the seven school boards of trustees have the authority to increase the thirteen-mill minimum foundation based on the authority provided in Act 388?

Law/Analysis

I. Impact of Act 388 on Local Legislation

Initially, you ask if Act 388's limitation millage rate increases to growth to CPI and population growth apply to the thirteen-mill minimum foundation imposed by local legislation. In a dissent, Justice Kittredge aptly described Act 388, otherwise known as the Property Tax Reform Act, in Berkeley County School District v. South Carolina Department of Revenue, 383 S.C. 334, 354-55, 679 S.E.2d 913, 923-24 (2009):

> In 2006, the Legislature enacted the Property Tax Reform Act (Act), 2006 Act No. 388. This Act substantially changed the way local school districts are funded. Under the Act, a portion of the funding previously provided by property taxes on legal residences has been shifted to the State using a 1% increase in sales tax.

Justice Kittredge went on to explain that school districts receive reimbursement to replace money lost as a result of the property tax exemption on legal residences through a three-tiered system from the money received from the increase sales tax. Id.

In addition to exempting residential property from taxes imposed for school operating millage, Act 388 also created a hard cap on increases in millage rates imposed for operating purposes by municipalities, counties, special purpose districts, via amendments to section 6-1-320 of the South Carolina Code, which you mention in your letter. 2006 S.C. Acts 388. Prior to Act 388, section 6-1-320 prohibited local taxing authorities from increasing millage rates for operating purposes "above the rate imposed for such purposes for the preceding tax year only to the extent of the increase in the consumer price index for the preceding calendar year." S.C. Code Ann. § 6-1-320(A) (2004). Section 6-1-320(B) of the South Carolina Code (2004) allowed for this limitation to be exceeded under certain circumstances and section 6-1-320(C) of the South Carolina Code (2004) allowed for the limitations set forth under section 6-1-320(A) to be overridden by "a positive majority vote of the appropriate governing body." Id.

Act 388 made significant amendments to section 6-1-320. 2006 S.C. Acts 388. Act 388 allowed for increases in the millage rate due to increases in population in addition to the consumer price index ("CPI") in section 6-1-320(A)(1)(Supp. 2019). Section 6-1-320(B) of the South Carolina Code (Supp. 2019) further limits the circumstances in which the millage rates can be increased above the restrictions imposed in section (A), to a two-thirds vote of the local governing body and only in seven rare circumstances including financial emergencies, expenses imposed by court order, or state or federal government mandates.

In your letter, you ask whether the limitations placed on local governing bodies in section 6-1-320(A) allowing them to increase millage rates above the preceding tax year only to the extent of the increase in CPI and population growth applies to the minimum county foundation imposed by the local legislation. We believe a court could find that it does.

Section 6-1-320 references the authority of a "local governing body" to increase millage rates. Section 6-1-320 is contained in article 3 of chapter 1 of title 6 of the South Carolina Code governing local governments' authority to assess taxes and fees. Section 6-1-300 of the South Carolina Code (2004) contains a list of definitions to be used in article 3. Section 6-1-300(3) defines "local governing body" as "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." (emphasis added).

As you mentioned in your letter, the Legislature imposed the millage rate of 13 mills by local legislation passed in 1963. 1963 S.C. Acts 187.

> There shall be levied a thirteen-mill tax to be applied uniformly to all property in the county to guarantee a minimum foundation program of public school education to all children in the county. The levy shall be entered by the county auditor and collected by the county treasurer as other taxes on property. The proceeds of this levy shall be credited by the county treasurer to the county board of education. The county board of education shall provide a formula to insure each child attending public school a minimum of two hundred twenty-five dollars per pupil.

Id. Although the Legislature amended this local legislation several times, we did not find any acts transferring the authority to levy a tax from the Legislature to another body. Thus, we must determine if the Legislature intended to treat itself as a "local governing body" pursuant to section 6-1-300 and therefore subject itself to the millage rate limitations set forth in section 6-1-320 or whether section 6-1-320 does not apply to jurisdictions whose millage rates are set by local legislation.

To make this determination we must employ the rules of statutory construction, the primary of which to effectuate the intent of the Legislature.

> The primary function of the court in interpreting a statute is to ascertain the intention of the legislature. Wright v. Colleton County School District, 301 S.C. 282, 391 S.E.2d 564 (1990). In construing a statute, its words must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation. First Baptist Church of Mauldin v. City of Mauldin, 308 S.C. 226, 417 S.E.2d 592 (1992).

Adkins v. Comcar Indus., Inc., 316 S.C. 149, 151, 447 S.E.2d 228, 230 (Ct. App. 1994), aff'd, 323 S.C. 409, 475 S.E.2d 762 (1996). "A statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." State v. Sweat, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), aff'd as modified, 386 S.C. 339, 688 S.E.2d 569 (2010). "[T]he statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." S.C. State Ports Auth. v. Jasper County, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). "The lawmaking body's construction of its language by means of definitions of the terms employed should be followed in the interpretation of the act or section to which it relates and is intended to apply." Fruehauf Trailer Co. v. S.C. Elec. & Gas Co., 223 S.C. 320, 325, 75 S.E.2d 688, 690 (1953).

The Legislature specifically chose to expand the definition of "local governing body" for purposes of section 6-1-320 to include "the body authorized by law to levy school taxes," acknowledging that the taxing authority may extend beyond traditional local governing bodies.[1] In regard to Spartanburg County, we find the only body authorized to levy school taxes is the Legislature. As such, a court could conclude the Legislature sought to apply the millage rate cap to all bodies authorized to levy school taxes, including itself.

This understanding of the statute is further supported by another provision contained in section 6-1-320 of the South Carolina Code. Section 6-1-320(E) of the South Carolina Code (Supp. 2019) provides:

> Notwithstanding 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.

(emphasis added). By this provision, the Legislature appears to acknowledge the existence of special legislation in regard to millage rates and voices its intent not to override that legislation, but to construe it in conjunction with the other provisions contained in section 6-1-320. This provision specifically references the rights of legislative delegations to set school district millage, but we also believe the language referencing limitations on fiscal autonomy could apply to situations such as these where the Legislature itself sets the millage. We believe a court could read the 1963 Act as a "limitation on the fiscal autonomy" of the school districts in Spartanburg County because it does not allow for any change in the tax rate outside of the 13 mills. A court could view section 6-1-320(E) as further indicating the Legislature's intent to construe section 6-1-320 in conjunction with previously enacted local legislation and thus, applying the provisions of section 6-1-320 to Legislature. Accordingly, a court could find the millage rate limitations

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[1] As our Supreme Court acknowledged in 2013,

> fiscal authority amongst South Carolina's various school districts ranges from complete fiscal authority to no fiscal authority whatsoever. Ulbrich, Local Governments and Home Rule in South Carolina 13. Twenty-three districts have total fiscal independence to approve their own budgets and set their own millage rates, while twenty-nine districts have no fiscal authority. Id. at 13–14. Further, the power to raise millage rates varies greatly from one school district to another, depending on the local legislation that governs school districts in that particular county. Id.

Home Builders Ass'n of S.C. v. Sch. Dist. No. 2 of Dorchester Cty., 405 S.C. 458, 466-67, 748 S.E.2d 230, 235 (2013).

contained in section 6-1-320(A) apply in situations where the Legislature acts as the taxing authority and levies the tax through the enactment of local legislation.

However, we also note that through its plenary powers, the Legislature has the authority to pass legislation as it sees fit so long as it does not violate the Constitution. See Fullbright v. Spinnaker Resorts, Inc., 420 S.C. 265, 271-72, 802 S.E.2d 794, 797 (2017) (finding the Legislature has the authority to pass legislation as it sees fit for the benefit of the State so long as it is not expressly prohibited by the Constitution). Thus, we believe the Legislature may pass legislation increasing the millage rate imposed for Spartanburg County schools so long as it does not violate the Constitution.

Article VIII, section 7 of the South Carolina Constitution (2009), passed as part of the Home Rule Amendments to the South Carolina Constitution, prohibits the Legislature from enacting legislation for one specific county. While not free from doubt, our courts generally find that because public education is a function of the state rather than a county, special legislation pertaining to education does not violate the Home Rule provisions of the State Constitution. See Charleston Cty. Sch. Dist. v. Charleston Cty., 297 S.C. 300, 302, 376 S.E.2d 778, 780 (1989) ("Legislation regarding public education in a particular county does not violate the Home Rule Act because public education is not the duty of the separate counties but of the General Assembly."); Moye v. Caughman, 265 S.C. 140, 143, 217 S.E.2d 36, 37 (1975) (finding a statute changing the method of electing a school district's board of trustees for a particular county did not violate the State Constitution prohibition on special legislation). As such, if the Legislature choses to amend the 1963 legislation imposing the 13-mill tax, we do not believe a court would find such action by the Legislature barred by the Home Rule Amendments.

II. Exemption of Owner Occupied Property for School Operating Purposes

Next, you ask if CPI and population growth are not applicable to the thirteen-mill minimum county foundation, whether the exemption of owner-occupied residential property applies to the thirteen-mill county foundation. As explained above, we believe a court could find the cap imposed under section 6-1-320, as revised by Act 388, applies to property taxes levied by the 1963 local legislation. Nonetheless, we find it pertinent to address the impact of the property tax exemption imposed by Act 388. As we previously noted, Act 388 changed the mechanism by which local school districts are funded by creating an exemption on all owner-occupied residential property from "all property taxes imposed for school operating purposes but not including millage imposed for the repayment of general obligation debt." 2006 S.C. Acts 388 (codified as amended at S.C. Code Ann. § 12-37-220(B)(47)(2014)). To offset the loss in revenue due to this exemption, the Legislature imposed an additional one percent sales, use, and casual excise tax. Id. (codified at S.C. Code Ann. § 12-36-1110 (2014)). We understand you question whether these enactments apply to Spartanburg County.

As we quoted above, the local legislation imposing the thirteen-mill tax rate provides the thirteen-mill tax shall be "applied uniformly to all property in the county . . . ." Accordingly, this

provision clearly included residential owner-occupied property. Because this local law and section 12-37-220(B)(47) both deal with the levy of taxes for school purposes, we follow the guidance given to us by the Court of Appeals as stated in Richardson v. City of Columbia, 340 S.C. 515, 520, 532 S.E.2d 10, 12-13 (Ct. App. 2000):

> When two statutes can be reconciled, the court must construe the statutes in such a way that both remain functional. Porter v. South Carolina Pub. Serv. Comm'n, 327 S.C. 220, 224 n. 3, 489 S.E.2d 467, 469 n. 3 (1997). The more recent statute takes precedence over the earlier statute only if there is a conflict between the two statutes.

Because the local legislation applies the thirteen-mill levy to all property and section 12-37-220(B)(47) specifically excludes owner-occupied residential property from all taxes levied for school operating purposes, we believe a court would find they are in conflict with one another. Therefore, following the guidance of our courts, we would presume because the Legislature enacted section 12-37-220(B)(47) subsequent to the local legislation, a court would find section 12-37-220(B)(47) supersedes the local legislation in regard to taxes levied on owner-occupied residential property for school operating purposes.

We understand this perception of section 12-37-220(B)(47) is consistent with that of the school districts located in Spartanburg County. You mentioned in your letter Spartanburg County did not include owner-occupied residential property in the 2007-2008 thirteen-mill tax levied for the minimum county foundation. It is our understanding that since the passage and implementation of Act 388, the school districts in Spartanburg County have and are receiving reimbursement from the Homestead Exemption Fund aimed at replacing revenue lost from the exemption. See Berkeley Cty. Sch. Dist. v. S.C. Dep't of Revenue, 383 S.C. 334, 336, 679 S.E.2d 913, 914 (2009) (involving a suit brought by several school districts including District No. 1 and District No. 5 of Spartanburg County seeking reimbursement from the Homestead Exemption Fund for capital construction expenditures financed through lease-purchase and installment-purchase agreements). Accordingly, we agree with Spartanburg County's treatment of this property as exempt from the thirteen-mill minimum county foundation.

III. Authority of the Oversight Committee

You also inquire as to whether the local legislation gives the Oversight Committee the authority to increase the millage by CPI and population growth as provided in section 6-1-320. To answer your question, we must look back to the history of the local legislation regarding funding of Spartanburg County Schools. As we previously mentioned, in 1963 the Legislature levied the 13-mill tax. 1963 S.C. Acts 186. While the Legislature did not give authority to any other body to change the millage rate, it did give authority to the county board of education to "provide a formula to insure each child attending public schools a minimum of two hundred twenty-five dollars per pupil." Id.

Since 1963, the Legislature amended the local law pertaining to school funding in Spartanburg County several times. In 1994, the Legislature abolished the Spartanburg County Board of Education and transferred its authority to the local school boards. 1994 S.C. Acts 610. In addition, the Legislature established an oversight committee, the Spartanburg County Education Oversight Committee (the "Oversight Committee"), to ensure the minimum foundation money was distributed on a fair and equitable basis. Id. We do not read the 1994 act as transferring authority to levy the millage to either the local school boards or the Oversight Committee. Nevertheless, the Legislature repealed the 1994 act in 1995. 1995 Acts 189. In 1995, the Legislature established a County Board of Education and charged it with the power to ensure minimum foundation money was distributed on a fair and equitable basis. Id. But, it also did not give authority to the County Board of Education to levy or modify the millage. Id.

In 1998, the Legislature amended the 1995 act by reestablishing the Oversight Committee and devolving the powers of the County Board of Education to the Oversight Committee and abolishing the County Board of Education. 1998 S.C. Acts 610. The 1998 act also states:

> The Spartanburg County Education Oversight Committee shall ensure that the minimum foundation monies are distributed on a fair and equitable basis. For this purpose, funding derived from the minimum foundation monies must be distributed annually to each of the seven school districts by the Spartanburg County Treasurer's Office in accordance with the formula guidelines as directed by the oversight committee.

Id. In addition, this act states: "Nothing contained herein shall be construed as decreasing the fiscal autonomy of the seven school districts in Spartanburg County." Id. However, we did not find any evidence of the Legislature's intent to transfer taxing authority to the Oversight Committee. Based on our review of the local legislation, we do not believe the Legislature gave either the County Board of Education or the Oversight Committee the authority to levy a tax. As such, we do not believe the Oversight Committee has the authority to increase the millage. Furthermore, while it appears the Legislature gave fiscal autonomy to the seven school districts to allocate the funding received, we do not believe the Legislature gave the districts authority to levy the millage. We are of the opinion that this authority remains with the Legislature until and unless it decides to devolve that authority to another body, be it the Oversight Committee or the districts' boards of trustees.[2]

[2] In 1979, we opined the Legislature can transfer the authority to levy taxes for purposes of school funding from a legislative delegation via special legislation. Op. Att'y Gen., 1979 WL 43132 (S.C.A.G. Oct. 25, 1979). However, we note if the Legislature choses to delegate its authority to levy the millage on another body, in accordance with article X, section 5 of the South Carolina Constitution (2009), it must delegate such authority to an elected body so as to not violate the constitutional provision prohibiting taxation without representation. See Crow v. McAlpine, 277 S.C. 240, 285 S.E.2d 355 (1981) (holding a statute allowing a county board of education appointed by the legislative delegation to levy and collect taxes violated the South Carolina Constitution).

IV. Minimum Funding Per Pupil

Lastly, you inquire as to whether the Oversight Committee or the boards of trustees for the school districts have the authority to increase the millage if the two hundred and twenty five dollars per pupil mandate in the 1963 act is not met. As quoted above, the 1963 Act required the County Board of Education to provide a formula establishing a minimum of two hundred and fifty dollars of funding per child. We presume this responsibility was devolved upon the Oversight Committee, back to the County Board of Education, and then again back to the Oversight Committee by way of the various amendments to the local law. However, because the Legislature to this point has not delegated its authority to levy the millage to these bodies, we do not believe they have the authority to increase the millage even if such an increase is necessary to maintain the required level of funding imposed by the act.

Presuming the Oversight Committee is required ensure a two hundred fifty dollar minimum funding per pupil and it is not able to do so due to lack of funding, which we believe in this case is within the authority of the Legislature, this could be viewed by a court as an unfunded mandate. In prior opinions, this Office opined that the Legislature's failure to fund a statutory mandate results in a suspension of the mandate. See Op. Att'y Gen., 2010 WL 4982609 (S.C.A.G. Nov. 16, 2010) (opining that the State Human Affairs Commission would likely not be held liable for failure to enforce certain statutory duties if it had not received appropriations sufficient to cover the cost of such enforcement); Op. Att'y Gen., 2008 WL 4489047 (finding a school district was not responsible for operating a specific program deleted from the current budget by the Legislature). As such, we do not believe the Oversight Committee would be held responsible for not meeting the per pupil funding requirement if the reason it did not meet it was due to a lack of funding by the taxing authority, which in this case appears to be the Legislature.

Conclusion

Based on our analysis above, we believe a court could determine the millage rate cap contained in section 6-1-320 of the South Carolina Code, as amended by Act 388, is applicable to the Legislature that levied the millage rate through the enactment of local legislation. However, we believe the Legislature nevertheless has the authority to set the millage at any rate it desires as long as it does not run afoul of the Constitution. We also believe the Legislature intended section 12-37-220(B)(47), exempting owner-occupied residential property from taxes imposed for school operating purposes, to apply to counties such as Spartanburg that previously imposed a tax on all property.

In our review of the local laws pertaining to the funding of Spartanburg County schools, we did to find that the Legislature took action to transfer the taxing authority from itself to another body such as the Oversight Committee or the local school boards. Therefore, we do not believe these entities have the authority change the millage rate based on CPI, population, or otherwise.

Lastly, while we recognize the Legislature imposed a minimum funding requirement for each pupil in the County, the Legislature did not give authority to increase the millage to another body if this requirement is not met. Nevertheless, if the Legislature, who is the only body with taxing authority for Spartanburg County Schools, fails to fund such a requirement, we do not believe the Oversight Committee or the local school boards can be responsible for not satisfying this mandate.

Sincerely,

Cydney Milling
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REVIEWED AND APPROVED BY:

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