



HENRY McMASTER
ATTORNEY GENERAL

October 8, 2008

The Honorable Lewis R. Vaughn
Member, South Carolina Senate
301 University Ridge, Suite 2400
Greenville, South Carolina 29601

Dear Senator Vaughn:

We understand from your letter that you desire an opinion of this Office concerning “the impact of S.C. Code Ann. §§ 6-11-273 and 6-11-275 on the ad valorem property tax millage rate levied by the Slater-Marietta Fire District.” You informed us that the “Slater Marietta Fire District (“SMFD”) is a special purpose district located wholly within Greenville County and was created by S.C. Act No. 1170 of 1968.” In addition, you provided the following background information on the SMFD.

[I]n 2005 SMFD held a referendum (pursuant to S.C. Code Ann. § 6-11-273) to ask the voters in its District whether its statutory ad valorem millage rate limit could be raised from its traditional 10 mills (as established back in 1968) to a new limit of 14 mills. The voters approved the new millage rate limit increase to 14 mills in the 2005 referendum. After the referendum, the SMFD raised its millage rate to 13 mills, which was less than the full 14 mills that the referendum would have allowed SMFD (the 13 mills was rolled back in 2007 as part of Greenville County’s property tax reassessment).

Considering this information, you ask our Office for guidance as to whether “[a]s a result of the successful 2005 referendum which moved the District’s millage limit to 14 mills, can the SMFD Board of Commissioners vote to raise its own millage to any level up to the 14 mills established by referendum without County Council approval or without holding another referendum pursuant to S.C. Code Ann. § 6-11-273?”

Law/Analysis

Chapter 11 of title 6 of the South Carolina Code governs special purpose and public service districts. As referenced in your letter, section 6-11-273 of the South Carolina Code (2004),

The Honorable Lewis R. Vaughn
Page 2
October 8, 2008

contained among these provisions, provides a mechanism by which certain special purpose districts may change the tax millage originally provided in the district's enabling legislation.

Notwithstanding any other provision of law, any special purpose district created by an act of the General Assembly which is authorized to levy taxes for the operation of the district may request the commissioners of election of the county in which the district is located to conduct a referendum to propose a change in the tax millage of the district. Upon receipt of such request the commissioners of election shall schedule and conduct the requested referendum on a date specified by the governing body of the district.

S.C. Code Ann. § 6-11-273. In addition, section 6-11-275 of the South Carolina Code (2004) allows certain special purpose districts to increase their millage upon approval of the governing body of the county in which it is located.

All special purpose districts totally located within a county, which were in existence prior to March 7, 1973, and which have the statutory authority to annually levy taxes for maintenance and operation are authorized to increase their respective millage limitations upon the written approval of the governing body of the county in which they are located. Any increase above the statutory limitation must be approved each year.

Any such millage increase shall be levied and collected by the appropriate county auditor and county treasurer.

As you explained, the Legislature created SMFD via act 1170 in 1968. 1968 S.C. Acts 2686. According to this legislation:

The Auditor and Treasurer of Greenville County are hereby directed to levy and collect a tax of not more than ten mills upon the taxable property of the district for the purpose of defraying the expenses incurred by the board. All monies collected from this levy shall be credited to the fire district.

Because the Legislature created SMFD and give it the authority to levy taxes, SMFD may change its tax millage by referendum pursuant to section 6-11-273. Moreover, because SMFD existed prior to March 7, 1973, it may increase its millage upon written approval of County Council.

You indicate that SMFD conducted a referendum in 2005 allowing it to increase its tax millage from 10 mills to 14 mills. According to information provided by the Greenville County

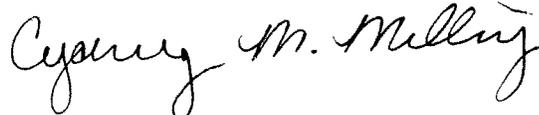
The Honorable Lewis R. Vaughn
Page 3
October 8, 2008

Attorney, the voters were asked: "Shall the allowable Tax Millage limitation for the Slater-Marietta Fire District established by the State Legislature at Ten (10) Mills be increased to no more than Fourteen (14) Mills as may be authorized by the Commissioners of the District." Although the referendum authorized an increase to 14 mills according to your letter, SMFD only raised its tax millage to 13 mills after the passage of the referendum. Thus, you now question whether SMFD is authorized to increase its millage to 14 without another referendum or approval of the Greenville County Council in accordance with section 6-11-275 of the South Carolina Code.

Based on our understanding of the referendum held in 2005, it clearly gives SMFD the authority to levy millage up to 14 mills. While SMFD did not fully exercise the authority given to it when imposing millage less than 14 mills, we do not believe SMFD lost its authority to do so. As stated in a prior opinion of this Office: "[W]here people have voted for an increased millage rate, the Legislature has recognized that the voters' decision will stay in place until affected by law." Op. S.C. Atty. Gen., October 16, 2000. Finding no change in the law since the referendum in 2005, we believe SMFD continues to have the authority to increase its millage up to 14 mills. Furthermore, we do not believe a referendum or approval by the Greenville County Council is necessary.

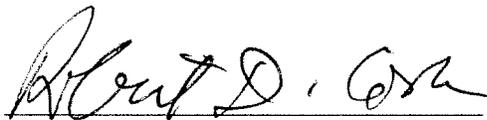
Very truly yours,

Henry McMaster
Attorney General



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REVIEWED AND APPROVED BY:



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