

October 8, 2007

The Honorable Kevin L. Bryant  
Member, South Carolina Senate  
104-A North Avenue  
Anderson, South Carolina 29625

Dear Senator Bryant:

We understand from your letter that you desire to request an opinion of this Office concerning the interpretation of Section 59-21-420 of the South Carolina Code. You state: “Specifically, please give me your opinion as to the applicability of any funds secured by a waiver granted by the South Carolina State Board of Education to the routine maintenance of grounds or facilities as opposed to the ‘renovation, capital improvement, or repair of school classrooms, libraries, laboratories, and other instructional facilities, including music rooms’ or the creation of additional classroom space.”

In a followup letter, you narrowed the scope of your inquiry to deal particularly with a waiver application submitted by Richland School District Two (“District Two”), requesting a waiver from the South Carolina State Board of Education (the “Board of Education”) from the millage rate reduction requirement under section 59-21-420. Based on the information provided by District Two in its application, you ask “whether or not this application satisfies the statutory requirement for waiver of the millage reduction mandated by 59-21-420.”

### **Law/Analysis**

As we explained in a recent opinion issued to you, section 59-21-420 of the South Carolina Code (2004) is encompassed as part of the South Carolina Education Improvement Act (the “EIA”). This provision generally calls for the Legislature to appropriate funds (“EIA Funds”) to individual school districts for “the School Building Aid program of the Education Improvement Program” via its annual appropriations act. Section 59-21-420(a) provides that these funds to be used “(i) for the renovation, capital improvement, or repair of school classrooms, libraries, laboratories, and other instructional facilities, including music rooms, or (ii) to reduce the millage required to pay principal and interest on bonds issued for such purposes if the district qualifies for the exception provided for in subsection (b) hereof.” Subsection (b) requires school districts that have issued bonds or “otherwise undertaken any capital improvement programs during any of the most recent give fiscal

years” devote at least fifty percent of these funds to “reduce the millage rate required to pay debt service on such outstanding bonds.” Id. § 59-21-420(b). Nevertheless, subsection (b) allows a school district, which would otherwise be subject to the millage rate reduction requirement, to request a waiver from the Board of Education under certain circumstances. Specifically, subsection (b) provides:

Provided however, in the event that a school district sold bonds or secured a loan at an interest rate less than prevailing rates and has an identified need for funds in excess of fifty percent of funds provided in subsection (a) or anticipates a significant increase in need for additional classroom space, that district may request a waiver from this requirement by the State Board of Education. After consultation with the State Treasurer on prevailing interest rates and review of the evidence accompanying the waiver request from the school district, and upon certification by the State Treasurer that rates are beneficial to local school district, the State Board of Education may grant a waiver if the evidence is substantiated. The remaining sums may be used either to reduce millage to pay debt service or to pay for capital improvements, repairs, or renovations otherwise authorized during the then current fiscal year. Provided, Further, That if, on the occasion when the annual millage would otherwise be increased to provide for capital improvements, repairs, or renovations, there is on hand with the country treasurer sums from the appropriation herein authorized, sufficient to meet all or a portion of the payments of principal and interest on bonds to be outstanding in the ensuing fiscal year, then such portion of the millage required to pay such debt service need not be imposed.

Id.

With your followup letter, you attached the application for waiver of the requirement to reduce millage submitted by District Two to the Board of Education. As you point out, the application initially states District Two “intends to use its EIA School Building Aid trust funding for maintenance of school facilities.” Moreover, in the portion of the application identifying the need for the funds, District Two makes reference to a five year maintenance plan and a list of capital projects it authorized for fiscal year 2006-2007. District Two also states it does not have a need for additional classroom space and “[t]hese funds are used for maintenance purposes.” You question whether excess EIA Funds available due to the waiver of the reduced millage requirement may be used for maintenance of school facilities and thus, whether the application is in compliance with section 59-21-420.

According to section 59-21-420(b), the Board of Education may grant a waiver if the school district sold bonds or obtained a loan at less than the prevailing interest rate and either the school

district identified a need for funds in excess of the fifty percent allowed or it anticipates “a significant increase in the need for additional classroom space.” S.C. Code Ann. § 56-21-420(b). From reading District Two’s application, we gather it is asserting it sold bonds or obtained a loan at less than the prevailing interest rate. While District Two states it does not have a need for additional classroom space, it specifically identifies a five year maintenance plan, technological infrastructure, and capital projects as the needs for the additional funds. Thus, based on the application, District Two asserts satisfaction of the requirements under section 59-21-420(b) for the State Board of Education to grant a waiver. Whether or not these two requirements were actually met is a factual determination, which is beyond the scope of an opinion of this Office. Op. S.C. Atty. Gen., September 14, 2006 (“investigations and determinations of facts are beyond the scope of an opinion of this Office and are better resolved by a court.”). Therefore, we are in no position to comment on District Two’s satisfaction of the requirements under section 59-21-420(b) of the South Carolina Code. However, we note that should District Two establish both that it sold bonds or obtained a loan at less than the prevailing interest rate and it identified a need for funds in excess of fifty percent, it remains within the Board of Education’s discretion as to whether or not to grant a waiver to District Two. S.C. Code Ann. § 59-21-420(b).

In addition to addressing the requirements under section 59-21-420(b), we gather from your letter that you ultimately are not concerned with whether these requirements were met in the case of District Two. Rather, we believe your concern lies with how District Two plans to use the excess funds if they are available due to a waiver of the millage rate reduction requirement. Subsection (a), as explained above, allows EIA Funds to be used in one of two ways. They may be used “for the renovation, capital improvement, or repair of school classrooms, libraries, laboratories, and other instructional facilities, including music rooms, or . . . to reduce the millage required to pay principal and interest on bonds issued for such purposes . . . .” S.C. Code Ann. § 59-21-420(b). Obviously, excess funds available due to the waiver will not be used to reduce the millage rate. Accordingly, under these circumstances, the excess funds must be used “for the renovation, capital improvement, or repair of school classrooms, libraries, laboratories, and other instructional facilities, including music rooms . . . .” S.C. Code Ann. § 59-21-420(b).

District Two’s application indicates the excess funds available due to the waiver will be used for maintenance in accordance with its five year maintenance plan, technological infrastructure, as well as various capital projects. The application states District Two attached both a copy of its five year maintenance plan and a list of the proposed capital projects. Although these attachments did not accompany your request, we presume from the description that the capital projects listed most likely fall into the category of capital improvements contemplated as items eligible to be funded with EIA Funds. Moreover, expenditures for technological infrastructure are also likely to be considered a capital improvement eligible for funding EIA Funds. However, expenditures for maintenance present a more difficult question.

Section 59-21-420(a) specifically allows EIA Funds to be used for renovations and repairs to school facilities. The terms “renovation” and “repair” are not defined under section 59-21-420. Thus, in accordance with the rules of statutory interpretation, we look to the plain and ordinary

meaning of these terms in order to understand the Legislature's intent. Key Corporate Capital, Inc. v. County of Beaufort, 373 S.C. 55, 59, 644 S.E.2d 675, 677 (2007) ("the words of the statute must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation."). Webster's New World Dictionary defines the term "renovate" as "to make fresh or sound again, as though new; clean up, replace worn and broken parts in, repair, etc." Webster's New World Dictionary 1203 (2nd ed. 1976). The same dictionary defines "repair" as "to put back in good condition after damage, decay, etc.; mend; fix." Id. at 1204.

District Two uses the term "maintenance" to describe the purpose for which the additional funds would be used. This term is generally defined as "[t]he care and work put into property to keep it operating and productive; general repair and upkeep." Black's Law Dictionary 965 (7th ed. 1999). Given the definitions of the terms renovate and repair cited above and the definition of the term maintenance, we believe actions considered maintenance may also encompass repairs and renovations. For example, an undertaking such as the replacement or patching of a damaged roof, which may be referred to as maintenance, would also satisfy the definition of repair. Contrarily, other expenditures for things such as air filters or other expenditures occurring annually that are also considered maintenance, would not necessarily qualify as a repair because they do not improve the condition of the facility. However, without looking at every single item District Two proposes to use the funds for, we cannot say that all such items are or are not eligible to be funded by EIA Funds.

Nevertheless, the Legislature in its enactment of section 59-21-420, specifically placed the responsibility and discretionary authority in the Board of Education to determine whether a waiver should be granted to a particular school district. Thus, we would presume the Board of Education considers the needs identified in the application, especially giving to consideration to whether they are eligible to be funded with EIA Funds. Moreover, if a school district uses EIA Funds for purposes other than those provided in section 59-21-420, whether or not available due to a millage rate reduction waiver, the school district's actions could be subject to a legal challenge in a court of law. Thus, we trust that District Two is aware of the limitations set by section 59-21-420(a) on expenditures of EIA Funds and would not expend such funds in a manner conflicting with this provision.

### **Conclusion**

As we explained above, section 59-21-420 of the South Carolina Code presents two particular requirements that must be met in order for a school district to become eligible for a waiver in the millage rate reduction requirement. On its face, District Two's application for waiver appears to satisfy these requirements. However, the Board of Education is charged with the ultimate responsibility to assure these requirements are met. Moreover, even if the Board of Education finds District Two satisfies these requirements, it retains discretion as to whether or not to grant District Two's request. Assuming the Board of Education grants the waiver, excess funds available to District Two pursuant to the waiver must be expended in accordance with the requirements set forth in section 59-21-420(a). Therefore, the excess funds must be "for the renovation, capital

The Honorable Kevin L. Bryant  
Page 5  
October 8, 2007

improvement, or repair of school classrooms, libraries, laboratories, and other instructional facilities, including music rooms . . . .” From our review of District Two’s application, we find its use of the excess funds for technological infrastructure and capital projects likely meets the requirements of section 59-21-420(a). However, its use of these funds for “maintenance,” as described in the application, may or may not qualify under section 59-21-420(a) depending on whether the items proposed for funding by District Two are in the nature of renovations or repairs, which are clearly eligible under section 59-21-420. If not, we believe these items are likely ineligible for funding with EIA Funds.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

---

Robert D. Cook  
Assistant Deputy Attorney General