



HENRY McMASTER
ATTORNEY GENERAL

September 14, 2009

The Honorable Dennis Carroll Moss
Member, House of Representatives
306 Silver Circle
Gaffney, South Carolina 29340

Dear Representative Moss:

We received your letter requesting an opinion of this Office regarding the impact joint resolution recently passed by the Legislature on previous legislation enabling Cherokee County School District 1 to issue bonds to fund specified improvements. Specifically, you ask: “[d]oes the enactment of the recent school district funding flexibility joint resolution H.3352, allow revenue collected pursuant to the Cherokee County School Bond-Property Act 588 of 1994 to be used to [fund deficits in Cherokee County School District 1's operations budget for the current fiscal year]?” Furthermore, you ask “[i]n what ways, if any, does enactment of the recent school district funding flexibility joint resolution effect [section 6(b)] in Act 588 of 1994?”

You also ask the following questions:

Does the Board of Trustees of Cherokee County School District 1 have the authority to address deficits in the school district's operations budget for the current fiscal year by increasing millage to be levied and collected for fiscal year 2009-2010? If the answer is yes, may revenue collected pursuant to Act 588 of 1994 be used to offset millage imposed to eliminate the deficit for fiscal year 2008-2009?

Law/Analysis

The Legislature passed act 588 in 1994, which allows Cherokee County School District 1 (the “School District”) to issue bonds funded by a one percent sales and use tax within Cherokee County to pay for specified improvements to be made to the schools within that district. 1994 S.C. Acts 6039. As you mentioned in your letter, in subsection 6(B) of this act, the Legislature provides:

(B) The Cherokee County Treasurer holding taxes collected pursuant to this act must certify to the auditor of the county on July fifteenth of each calendar year as to the amount of taxes held by that county

treasurer as of June thirtieth of the calendar year. The Cherokee County Auditor shall reduce the next levy of ad valorem property taxes required to pay debt service on bonds to which the tax is applicable by the amount of tax revenues certified as collected as of June thirtieth by the county treasurer. Taxes collected as of June thirtieth of a calendar year in excess of the amounts required to pay debt service due in the eighteen months following June thirtieth on bonds to which the tax is applicable must be applied to reduce the next levy of ad valorem property taxes required for payment of operational and maintenance expenses of Cherokee County School District 1.

Id.

According to this provision, if as of June thirtieth of any particular year, the revenue generated from the sales and use tax imposed by this act exceeds the amount needed to service the bonds for the next eighteen months, the excess can be used for the School District's operations. However, this provision requires that ad valorem property taxes be reduced by this amount.

In 1998, the Legislature amended section 6(B) of act 588 of 1994. 1998 S.C. Acts 3329. This provision now states as follows:

(B) The Cherokee County Treasurer holding taxes collected pursuant to this act must certify to the auditor of the county on July fifteenth of each calendar year as to the amount of taxes held by that county treasurer as of June thirtieth of the calendar year. The Cherokee County Auditor shall reduce the next levy of ad valorem property taxes required to pay debt service on bonds to which the tax is applicable by the amount of tax revenues certified as collected as of June thirtieth by the county treasurer. Taxes collected as of June thirtieth of a calendar year in excess of the amounts required to pay debt service due in the eighteen months following June thirtieth on bonds to which the tax is applicable must be applied to reduce the next levy of ad valorem property taxes required for payment of operational and maintenance expenses of Cherokee County School District 1. If the amounts certified collected as of June thirtieth exceed the amount required for debt service following a year in which the amount certified as collected was insufficient to eliminate the levy, then the excess in the current year must be rebated pro rata to property taxpayers who paid the levy in the prior year in the form of a credit against the taxpayer's current property taxes as they become due and payable. When such a credit cannot be applied, and upon application of the taxpayer, the rebate must be refunded directly to the taxpayer. The pro rata rebate percentage must be determined by

dividing the excess amount by the total assessed value of the property taxed. The credit is then determined by multiplying the property owner's assessed value by the pro rata rebate percentage. No credit or refund is allowed for amounts less than ten dollars.

Id. Pursuant to this amendment, not only must ad valorem taxes be reduced if the tax revenue exceeds the amount needed to pay debt service for eighteen months, but goes further to require taxpayers receive a credit or refund of property taxes under certain circumstances.

Recently, the Legislature passed act 86 of 2009, which you refer to as the school district funding flexibility joint resolution. 2009 S.C. Acts No. 86. This act allows school districts to "transfer and expend funds among appropriated state general fund revenues, Education Improvement Act funds, Education Lottery Act funds, and funds received from the Children's Education Endowment Fund for school facilities and fixed equipment assistance, to ensure the delivery of academic and arts instruction to students." Id. This act also allows school districts flexibility in staffing by suspending staffing ratios, delaying contracts to teachers, providing school districts with the ability to veer from salary schedules, and allowing school districts furlough teachers. Id. Additionally, the act suspends formative assessments for certain grades and programs. Lastly, the act suspends the local minimum effort requirement under the Education Improvement Act. Id.

Based on our review of act 86, we do not find any provision that allows the School District to use sales and use tax revenue generated under act 588 to be used to satisfy a deficit in the School District's budget. In fact, we do not find anything in act 86 that would impact act 588 of 1994 or act 458 of 1998 amending act 588. While act 588 of 1994 and act 458 of 1998 contain provisions that allow revenue generated from the sales and use tax in excess of that necessary to service the bonds to be used for school operating expenses, these provisions require an offsetting reduction in the levy of ad valorem taxes and under some circumstances a credit or refund of property taxes. Act 86 does not change these requirements.

You ask whether or not the School District's board of trustees has the authority to increase the millage levied for year 2009-2010 to offset the School District's deficit. The Legislature gave the School District the authority to levy taxes pursuant to act 685 of 1967. 1967 S.C. Acts 1382. Subsequently, in 1969, the Legislature added a requirement that the Cherokee County Legislative Delegation approved tax increases. 1969 S.C. Acts 922. However, this requirement was later found to be unconstitutional by the South Carolina Supreme Court in Gunter v. Blanton, 259 S.C. 436, 192 S.E.2d 473 (1972). Therefore, according to the School District's legislative history, the School District would have authority to set or increase its millage rate as needed. However, this authority is not unlimited. Section 6-1-320 of the South Carolina Code (Supp. 2008) places a limitation on how much a local governing body may increase its millage rate from year to year. As we stated in a prior opinion, school districts by statute are included in the definition of a local governing body. Op. S.C. Atty. Gen., June 13, 2007. Therefore, the provisions contained in section 6-1-320 apply to the School District. Subsection (A) of section 6-1-320 generally prohibits local governing bodies from increasing their millage rates above that imposed in the prior year except to account for inflation and increases in population. However, subsection (B) provides that the governing body,

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by a two-thirds vote, can suspend this limitation if one of seven enumerated exceptions applies. The first of these exceptions is a "deficiency of the proceeding year . . ." S.C. Code Ann. § 6-1-320(B)(1). Thus, according to this provision, the School District may increase its millage rate over any the increase needed to allow for inflation and changes in populations in order to satisfy a deficit from the previous year.

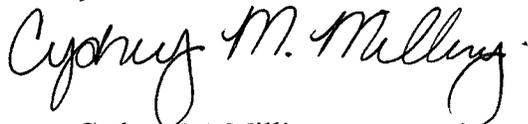
Lastly, you ask, assuming that the School District has the authority to increase its millage for fiscal year 2009-2010, whether the revenue collected pursuant to act 588 of 1994 can be used to offset millage imposed to eliminate the deficit for fiscal year 2008-2009. As we previously discussed, act 588 contains a provision allowing for excess revenue from the collection of the sales and use tax authorized by this act to be used for School District operations if that amount exceeds the amount needed to service the bonds for the next eighteen months as of June thirtieth. Therefore, if these circumstances exist, then we would presume that the School District could use the reduction in millage rate authorized under this provision to offset increases in the millage rate needed as determined by the School District's board.

Conclusion

Based on our review of act 86 of 2009, we do not believe that this act impacts 588 of 1994, as amended by act 458 of 1998. However, we acknowledge that act 588, as amended, allows, under certain circumstances, for excess revenue collected from the sales and use tax authorized by this provision to be used for the School District's operating expenses. In addition, we recognize that the School District has the authority to determine the millage rate necessary for its operations. Although the School District is subject to the millage rate limitations established under section 6-1-320 of the South Carolina Code, subsection (B) of this provision specifically allows school districts to suspend this limitation when a deficit exists in the preceding year's budget.

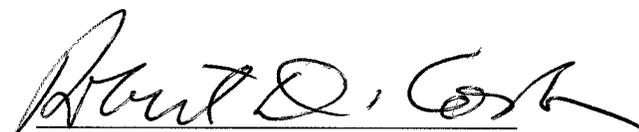
Very truly yours,

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