



HENRY McMASTER
ATTORNEY GENERAL

August 5, 2010

The Honorable Jackie W. Williams
Cherokee County Treasurer
Post Office Box 1267
Gaffney, South Carolina 29342-1267

Dear Ms. Williams:

We understand from your letter that you desire an opinion of this Office concerning Cherokee County's (the "County's") the use of sales and use tax proceeds collected pursuant to the Cherokee County School Bond-Property Tax Relief Act. According to your letter:

In 1994 a tax referendum was held in Cherokee County, South Carolina for the addition of a one percent sales and use tax to be imposed to pay debt service on behalf of Cherokee County School District No. 1. It is my understanding that this is referred to as the Cherokee County School Bond-Property Tax Relief Act 588 of 1994 . . . In recent years there have been funds generated as a result of this tax which exceed the debt service payment.

Based on this information, you ask whether or not "revenue collected pursuant to the Cherokee County School Bond-Property tax Relief Act 588 of 1994 be used to offset millage imposed to eliminate the general fund deficit?"

Law/Analysis

As you mentioned in your letter, in 1994, the Legislature passed the Cherokee County School District 1 School Bond-Property Tax Relief Act (the "Act"). 1994 S.C. Acts 6039. The Act essentially allows Cherokee County School District 1 (the "District") to impose a one percent sales and use tax and use the proceeds to pay debt service on bonds issued by the District. *Id.* In section 6 of the Act, the Legislature specifies how to handle tax revenues collected pursuant to the Act. *Id.*

SECTION 6. (A) The revenues of the tax collected in the county under this act must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of refunds made and costs to the Department

of Revenue and Taxation of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues quarterly to the county treasurer who holds the debt service funds established for payment of principal and interest on the bonds to which the tax is applicable. The State Treasurer may correct misallocation costs or refunds by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocation.

(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.

(C) The State Treasurer, in consultation with the Department of Education, shall determine an average per pupil amount by dividing the amount of revenues generated in the county by the imposition of the tax authorized by this act by the total number of students in grades K-12 in Cherokee County. The State Treasurer shall pay any other school district located in Cherokee County an amount equal to the average per pupil amount based on the number of pupils attending schools residing in Cherokee County to be used exclusively for capital projects.

Id. (emphasis added).

According to the Act, any revenues collected in excess of what is required to service the District's debt must be applied to reduce property taxes levied for the operation and maintenance of the District. As such, we believe excess revenues generated pursuant to the Act can be used to reduce property taxes collected for the District's operations and maintenance. Thus, to answer your

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question, we are of the opinion that excess tax revenues can be used as you phrase it, “to offset millage imposed to eliminate the general fund deficit.”¹

Very truly yours,

Henry McMaster
Attorney General



By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General

¹While you included a copy of the referendum question with your request, in this opinion, we do not address issues with regard to the referendum’s validity.