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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER  
ATTORNEY GENERAL

February 12, 2003

Patrick Murray, Fire Chief  
Cherokee Springs Fire District  
201 Flatwood Drive  
Chesnee, South Carolina 29323

Re: S.C. Code Ann. §12-37-251

Dear Chief Murray:

You have requested an opinion from this Office concerning the application of S.C. Code Ann. §12-37-251. By way of background, you indicate that the Cherokee Springs Fire District is a special purpose district located in Spartanburg County and that the District's Board of Fire Control has seven members which are elected by the public. Given this background, you specifically ask whether the Cherokee Springs Fire District "... can collect millage under ... [§12-37-251] and in this manner?"

**Law / Analysis**

The Cherokee Springs Fire District [the "District"] was created pursuant to Act No. 318, 1965 Acts and Joint Resolutions. Section 6 of Act No. 318 establishes the authority to levy taxes in favor of the District. Section 6 of the Act provides that

The Auditor and Treasurer of Spartanburg County are hereby directed to levy and collect a tax of not more than four mills, to be determined by the board of fire control, upon all 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.

As a general matter, local governing bodies, including special purpose districts, have somewhat limited authority to increase the millage rate imposed for operating expenses. Certain statutory provisions provide the only procedure by which special purpose districts may increase the millage rates which may be imposed.

S.C. Code Ann. §6-1-320 provides, in part:

*Henry McMaster*

(A) Notwithstanding Section 12-37-251(E), a local governing body may increase the millage rate imposed for general 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. However, in the year in which a reassessment program is implemented, the rollback millage, as calculated pursuant to Section 12-37-251(E), must be used in lieu of the previous year's millage rate.

(B) Notwithstanding the limitation upon millage rate increases contained in subsection (A), the millage rate limitation may be suspended and the millage rate may be increased for the following purposes:

(1) in response to a natural, environmental, or other disaster as declared by the Governor;

(2) to offset a prior year's deficit, as required by Section 7, Article X of the South Carolina Constitution;

(3) to raise the revenue necessary to comply with judicial mandates requiring the use of county or municipal funds, personnel, facilities, or equipment;

(4) to meet the minimum required local Education Finance Act inflation factor as projected by the State Budget and Control Board, Division of Research and Statistics, and the per pupil maintenance of effort requirement of Section 59-21-1030, if applicable.

(C) The millage rate limitation provided for in subsection (A) of this section may be overridden and the millage rate may be further increased by a positive majority vote of the appropriate governing body. The vote must be taken at a specially-called meeting held solely for the purpose of taking a vote to increase the millage rate. The governing body must provide public notice of the meeting notifying the public that the governing body is meeting to vote to override the limitation and increase the millage rate. Public comment must be received by the governing body prior to the override vote.

As you can see, Section 6-1-320 provides for a limited increase in the millage rate based on increases in the consumer price index. The limitation on yearly increments to the consumer price index does not apply in certain circumstances, as evidenced by subsections (B) and (C) above. Subsection (C) allows the limitation to be overridden upon a vote of the governing body. This provision would allow certain special purpose districts, for example, to increase the millage rate above the change in the consumer price index after the proper steps are taken to provide notice to the public of a meeting to vote on the change. See Op. Atty. Gen. Dated October 16, 2000.

Further, S.C. Code Ann. §§6-11-271, 6-11-273 and 6-11-275 provide additional authority for special purpose districts to raise millage rates. As the Cherokee Springs Fire District was created by legislative act in 1965 and you advise that the District's board of fire control is now elected rather than appointed, Section 6-11-271 applies to the district based on the following provisions:

(A) For purposes of this section, "special purpose district" means any special purpose district or public service authority, however named, created prior to March 7, 1973, by or pursuant to an act of the General Assembly of this State.

...

(D) Notwithstanding any other provision of law, any special purpose district within which taxes are authorized to be levied for maintenance and operation in accordance with the provisions of subsections (B) or (C) of this section, or otherwise, may request the commissioners of election of the county in which the special purpose district is located to conduct a referendum to propose a modification 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. If approved by referendum, such modification in tax millage shall remain effective until changed in a manner provided by law.

(E)(1) All special purpose districts located wholly within a single county and within which taxes are authorized to be levied for maintenance and operation in accordance with the provisions of subsections (B) or (C) of this section, or otherwise, are authorized to modify their respective millage limitations, provided the same is first approved by the governing body of the district and by the governing body of the county in which the district is located by resolutions duly adopted. Any increase in millage effectuated pursuant to this subsection is effective for only one year.

Similar to Section 6-11-271(D), Section 6-11-273 states that

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. If a majority of the qualified electors of the district voting in the referendum vote in favor of the proposed tax millage change, the governing body of the district shall by resolution adopt the new millage rate which shall thereupon have the full force and effect of law.

Finally, Section 6-11-275 provides that

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

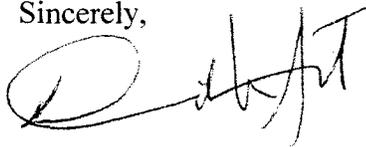
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they are located. Any increase above the statutory limitation must be approved each year. Any such millage increase shall be levied and collected by the appropriate county auditor and county treasurer.

**Conclusion**

I have been able to locate no other authority which would allow a special purpose district to increase its millage rate outside of Sections 6-1-320, 6-11-271, 6-11-273 and 6-11-275. Section 12-37-251 does not provide a means for raising the millage rates for taxes which may be levied for the benefit of special purpose districts. Rather, Section 12-37-251 generally establishes a homestead exemption from property taxes levied for school operations. The only relevance of Section 12-37-251 to the millage rates that special purpose districts may charge that I can find is in the calculation of rollback millage found in 12-37-251(E). That connection is found in Section 6-1-320(A), which provides, in part, that "... in the year in which a reassessment program is implemented, the rollback millage, as calculated pursuant to Section 12-37-251(E), must be used in lieu of the previous year's millage rate."

Sincerely,



David K. Avant  
Assistant Attorney General

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