

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

June 8, 1993

SUBJECT: Taxation and Revenue - School Taxes

SYLLABUS: Under Act 257, Acts of 1979, the General Assembly authorized the Colleton County Council to levy school taxes for the Colleton County School District. Under such authority, a separate school millage results and such levy may be shown on the tax notices to the public as a school tax levy.

TO: Mr. Michael L. Horton  
Assistant Comptroller General

FROM: Ray N. Stevens *RNS*  
Chief Deputy Attorney General

QUESTION: May the Colleton County Council establish a separate school millage to fund the operational budget of the Colleton County School District?

APPLICABLE LAW: Act 117, Acts of 1961; Act 821, Acts of 1966; Act 257, Acts of 1979; S.C. Code Ann. §§ 59-17-10 (1990), 59-1-160 (1990) and 4-9-70 (1986); S.C. Const. art. X, §§ 6 and 7(b), and art. VIII, § 7.

DISCUSSION:

A. Background

In Act 117, Acts of 1961, the General Assembly provided for the creation of the School District of Colleton County (District) with the District's boundaries co-extensive with the boundaries of Colleton County. All existing school districts within the county were dissolved with the assets and liabilities of the dissolved school districts passing to the newly created District.

Act 117 created a governing board for the District known as the Colleton County Board of Education (Board). The Board, by March 1 of each year, prepared a budget for the District for the succeeding school year. The budget was submitted to the county delegation so that the "General Assembly . . . may make appropriations therefor, . . ." in the annual lump

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sum appropriation which the General Assembly made for the "annual county appropriation act . . ." (Act 117, § 6).

In Act 821, Acts of 1966, the Board was abolished and a Board of Trustees (Trustees) was created to carry out the functions of the previous Board. In Act 257, Acts of 1979, the General Assembly enacted legislation for Colleton County stating the "levying of taxes for school purposes is hereby devolved upon County Council . . ." The act required the Trustees to submit their budget to the County Council rather than to the county delegation.

#### B. School Taxes In Colleton County

We are informed that each year County Council reviews the budget and levies sufficient millage to fund the District's budget as approved by County Council. Upon submitting tax bills to the public, however, the millage to fund the District's budget is not separately shown. Rather, the tax bill shows a total millage which includes the county millage and the District millage with no separation or break down of what millage is county tax and what millage is school tax. Your inquiry is whether the county may separately impose a school tax levy and a county tax levy and show each levy separately on the tax bill mailed to the taxpayers.

S.C. Const., art. X, § 7(b), provides in part that "each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year". School districts fund their budgets in part from taxes.

The General Assembly, by virtue of S.C. Const., art. X, § 6, may vest the power of taxation in all political subdivisions of the State. S.C. Code Ann. § 59-17-10 (1990) states that a school district is a body politic. Further, S.C. Code Ann. § 59-1-160 (1990) defines a school district as an area encompassing a legal entity whose sole purpose is that of providing free school education and the area of which constitutes a complete tax unit. The authority to levy the school tax is statutorily given to the County Council by Act 821, Acts of 1966.

The authority vested in County Council to levy the school tax millage is consistent with Home Rule. The Home Rule provisions of S.C. Const. art. VIII, § 7, state the General Assembly shall provide by general law for statutes, organization, powers, duties, functions, and

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responsibilities of counties. The legislative enactment of Art. VIII as it relates to counties is found at S.C. Code Ann. § 4-9-10, et seq. (1986) where the various powers and functions of county government are codified. Within this codification, the General Assembly chose in S.C. Code Ann. § 4-9-70 (1986) to specifically address the powers of counties as such related to school districts within the county. The portion of § 4-9-70 relevant to the circumstances in Colleton County is as follows:

. . . in any county where the General Assembly retained the authority to establish or limit the millage levied by school districts or levy a tax for educational purposes, on January 1, 1974, such authority shall continue in the General Assembly until such time as such authority may be transferred to the school district or the county governing body by act of the General Assembly. . . .

In Colleton County, as of January 1, 1974, the General Assembly retained the right to "levy a tax for educational purposes" by virtue of the 1961 and 1966 acts. That authority continued in the General Assembly until Act 257, Acts of 1979, provided that for Colleton County the "levying of taxes for school purposes is hereby devolved upon County Council . . ." At that point, County Council became the governing body responsible for levying the appropriate millage to fund the District. Accordingly, Colleton County Council may levy a separate millage for school tax and show such millage on tax notices provided to the public.

CONCLUSION:

Under Act 257, Acts of 1979, the General Assembly authorized the Colleton County Council to levy school taxes for the Colleton County School District. Under such authority, a separate school millage results and such levy may be shown on the tax notices to the public as a school tax levy.

RNS:wcg