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November 23, 1987

The Honorable C. Alex Harvin, III
The Majority Leader Emeritus
South Carolina House of Representative
Box 11867
Columbia, South Carolina 29211

Dear Representative Harvin:

You have requested the advice of this Office concerning the school budget for Clarendon County School District One (Clarendon 1). According to the information provided, the current school budget for that district does not provide for the funding of a deficit carried over from the previous fiscal year. You have asked how this matter is affected by Art. X, §7 of the Constitution of South Carolina, as amended, that provides, in part as follows:

- (b) Each political subdivision of the State as defined in Section 14 of this article and 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. Whenever it shall happen that the ordinary expenses of a political subdivision for any year shall exceed the income of such political subdivision, the governing body of such political subdivision shall provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year."

The similar predecessor to Art. X, §7, former Art. X, §2, was construed as follows in Pickelsimer v. Pratt, 198 S.C. 225, 17 S.E.2d 524, 528 (1941):

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"It is obvious that this constitutional provision is designed to prevent the General Assembly from failing to levy taxes equal in amount to the appropriation made. Unless this were done, the State's credit would be jeopardized and its ordinary governmental functions curtailed or seriously impaired."

This former provision was also interpreted as follows in a previous opinion of this Office:

"...the General Assembly is required by [former Art. X, §2] to present a balanced budget and if a deficit should occur, it is required to make good such a deficit at the next ensuing session of the General Assembly." 1976 Ops. Atty. Gen. No. 4254.

Although express reference is made in Art. X, §7 to the duty of only "political subdivisions" to satisfy prior year deficits (see Art. X, §7(b), supra), a term used separately in Art. X, §7 from that of "school districts", a previous opinion of this Office has concluded that Art. X, §7 also requires school districts to satisfy prior year deficits in the succeeding fiscal year. Ops. Atty. Gen. (March 6, 1979); cf. Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984). 1/ According to the information provided by you, the present budget for the school district in question appears to be inconsistent with Art. X, §7 in that it fails to satisfy the prior year's deficit.

The duty to remove the deficit appears to fall on both the school trustees and on the county governing body under Act 311 of 1977. The Board of Trustees for Clarendon One submits its budget to the county governing body when it is submitted to the County Board of Education. See Act 557 of 1971. The governing body then sets the tax levy. Act 311. Therefore, both the school district through its preparation of the budget and the county governing body, through its levying authority, have duties to ensure that the budget is balanced and that the prior year's deficit is removed. Whether

1/ "In the construction of statutes, the dominant factor is the intent not the language of the legislature. Abell v. Bell, 229 S.C., 91 S.E.2d 548 (1956). A statute must be construed in light of its intended purpose, and if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute. Id." (Emphasis added). City of Spartanburg, supra.

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compliance with the constitutional command of Art. X, §7 should be accomplished by shifting funding from other budget items to the deficit or by levying taxes would be for the school Board of Trustees and the County to decide.

Some guidance in this matter is provided by a brief Supreme Court opinion on cross petitions for writs of supersedeas as to writs of mandamus issued by a lower court. Dorchester County School District Three v. County Council, _____ S.C. _____, 347 S.E.2d 93 (1986). The Supreme Court found that the lower court had exceeded its authority in compelling the school board to submit a budget to county council and in requiring county council to impose a tax levy; however, the Supreme Court did mandamus the county council to consider all submitted budgets for one week and approve and adopt a budget by a fixed date. It reminded both the school board and the county council that "the paramount concern here is the welfare of the school children of Dorchester School District Three". Of further guidance here is the Court's citation of Kizer v. Dorchester County Vocational Education Board of Trustees, 287 S.C. 542, 340 S.E.2d 144 (1986), a case that made the following statement: "Higher quality education for the students must be ultimate goal of every school system." 340 S.E.2d at 147. Dorchester Three and Kizer also cited Brown v. Board of Education, 347 U.S. 483, 73 S.Ct. 686, 98 L.Ed. 873 (1954) the following passage of which was set forth by the Supreme Court in Kizer:

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. 347 U.S. at 493, 74 S.Ct. at 691." 340 S.E.2d at 146.

In conclusion, Art. X, §7 of the constitution requires that school districts maintain balanced budgets and that deficits be

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satisfied in the succeeding fiscal year. Accordingly, the duty to address the currently unfunded prior year deficit in the Clarendon One budget falls on the Board of Trustees that prepares the budget and the county governing body that levies the millage. In addressing the means of compliance with Art. X, §7, the Supreme Court has indicated that the paramount concern should be the welfare of the district's school children.

If I may be of other assistance, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/srcj

REVIEWED AND APPROVED BY:



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