

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____ May 6, 1986

SUBJECT: Taxation & Revenue - The Determination Of The Millage Rate For Compliance With Section 12-35-1557.

SYLLABUS: Upon receipt from a school district of the amount of funding required by § 12-35-1557, the county auditor shall set and apply a millage rate necessary to produce the revenue.

TO: Honorable L. R. "Skip" Waddell
Florence County Auditor

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: Is the county auditor required to determine the millage rate to insure sufficient tax revenue for compliance with § 12-35-1557?

APPLICABLE LAW: Section 12-35-1557, South Carolina Code of Laws, 1976.

DISCUSSION:

The tax value of property is multiplied by the millage rate and results in the amount of ad valorem taxes due for the property. Unless otherwise provided by statute, the governing body of the political entity that levies a tax is to set and prescribe the millage rate. County of Lee v. Stevens, 277 S.C. 421, 289 S.E.2d 155 and Simkins v. County of Spartanburg, 269 S.C. 243, 237 S.E.2d 69.

It is well settled that the General Assembly may prescribe the powers and duties of county auditors.

"It appears, therefore, and we so hold, that the General Assembly of the state has full power and authority to prescribe the duties and powers of the county auditors, county treasurers, the comptroller general and the South Carolina Tax Commission." Bank of Johnston v. Prince, 136 S.C. 439, 134 S.E.2d 387.

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The pertinent language of § 12-35-1557 is that:

" . . . school district board of trustees or other governing bodies of school districts shall maintain at least the level of financial effort per pupil for noncapital programs as in the prior year adjusted for an inflation factor estimated by the Division of Research and Statistics. The county auditor shall establish a millage rate so that the level of financial effort per pupil for noncapital programs adjusted for an inflation factor estimated by the Division of Research and Statistics is maintained as a minimum effort. . ."

As stated previously, the millage rate is the multiplier of the tax value of property. When so applied, the result is the tax due for each separate taxable property. Here the county auditor has no records or data upon which to determine the amount of revenue needed to fund the minimum level. The necessary information, however, is within and under the control of the school district and because of such, the district must determine the amount of revenue needed. Such is a necessary part of the school district's annual budget that is required by Article X, § 7 of the South Carolina Constitution. Upon receipt of the school district's budget, the auditor is to determine or calculate the millage necessary to produce the required revenue and apply the same to the tax value of the taxable property situate within the district.

CONCLUSION:

Upon receipt from a school district of the amount of funding required by § 12-35-1557, the county auditor shall set and apply a millage rate necessary to produce the revenue.

JLAJR/jws