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Attorney General's Opinion Confirms County Council Cannot Exceed Tax Cap; Also States County Council Calculates the Tax Cap

COLUMBIA, SC—In an Attorney General's opinion issued in response to the County Auditor's request to determine whether County Council can set a tax millage rate that exceeds the millage tax cap prescribed in Act 388 (section 6-1-320 (A)), the Attorney General's opinion stated, "County Council is prohibited from increasing the millage rate imposed for District Two above that provided for in section 6-1-320 (A), unless one of the exceptions under section 6-1-320(B) apply."

Richland County Auditor Paul Brawley contends that County Council did not meet the exceptions required by state law and the tax increase approved by Richland County Council in a 7-4 vote on Oct. 6 exceeded the tax cap.

"Businesses and property owners in Richland County will receive higher tax bills, and many in Richland School District Two will receive considerably higher tax bills this year at a time when every effort should be made to exercise fiscal restraint. The law is clear that the tax cap provision approved by the General Assembly in 2006 was designed to limit the amount of tax increases local governing bodies can approve to the Consumer Price Index (CPI), plus growth," says Brawley.

In response to questions raised by Richland School District Two and Richland County Council regarding whether County Council or the County Auditor calculates the millage cap, the Attorney General's opinion stated, "We believe a court would find that County Council is also responsible for the calculation of the millage rate cap." The opinion further states, "Although section 6-1-320 does not specifically state who should perform the millage rate cap calculation required pursuant to this provision, we believe that the legislature intended for this to be performed by the party with the authority to levy the tax, which is County Council."

Brawley disagrees, "Auditors have historically calculated millage rates in South Carolina and the local governing body sets the millage rate. Auditors who are countywide elected officials are put into the equation to ensure there are checks and balances for the citizens of the county. If County Council is allowed to both calculate the millage cap and also set the millage cap, that's the proverbial fox guarding the henhouse and tax payers will always come up short."

Property owners started receiving their tax notices this week. Citizens can obtain a copy of the Attorney General's opinion at www.rcgov.us/auditor.

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