



*Lynn Fitch*  
**ATTORNEY GENERAL**  
OPINIONS AND POLICY

December 16, 2025

William C. Hammack, Esq.  
Attorney, Clarke County Board of Supervisors  
Post Office Drawer 5514  
Meridian, Mississippi 39302-5514

Re: Correction of Error in Consolidated School District Tax Levy

Dear Mr. Hammack:

The Office of the Attorney General has received your request for an official opinion.

### **Background**

According to your request, due to an inadvertent error, the millage set for Fiscal Year 2025-2026 for one of Clarke County's ("County") consolidated school districts ("School District") will generate significantly less funds than the dollar amount requested by the School District. The error was discovered before September 30, 2025; however, there was not sufficient time for the Clarke County Board of Supervisors ("Board") to comply with the statutory notice and hearing requirements to amend the levy under Mississippi Code Annotated Sections 27-39-203 and 27-39-317. As a result, it is anticipated that the School District will have a substantial shortfall in revenue for the current fiscal year. You further state that the School District does not encompass the entire county.

### **Questions Presented**

1. May the Board now provide notice and hold a hearing to consider amending the School District's levy on an emergency basis as the applicable statute mandates the levying authority set a millage rate sufficient to generate the funds requested by the School District?
2. If the Board cannot amend the levy for the School District, may funds generated from the general county special levy under Section 27-39-329(2)(b) for Fiscal Year 2024-2025 and Fiscal Year 2025-2026, if properly declared surplus, be utilized to avoid or mitigate the School District having to issue a shortfall note under Section 37-57-108?
3. If the response to Question 2 is "yes," may the surplus funds be paid directly to the School District, and, if not, may the funds be utilized to pay the School District's shortfall note?

### **Brief Response**

1. There is no mechanism to hold a hearing and amend the School District's levy after the fiscal year has begun.
2. Ad valorem taxes collected pursuant to Section 27-39-329(2)(b), which are collected from the entire County, cannot be used to avoid or mitigate the School District, which only encompasses part of the County, having to issue a shortfall note under Section 37-57-108.
3. The answer to Question 2 renders this question moot.

### **Applicable Law and Discussion**

Section 37-57-104 provides the procedure for local school districts to request ad valorem taxes to the levying authority, in this case the County. "Upon receipt of the school board's order requesting the ad valorem tax effort in dollars, the levying authority shall determine the millage rate necessary to generate funds equal to the dollar amount requested by the school board." *Id.* This section further provides detailed notice and referendum requirements depending upon any increase of the millage rate. *Id.* The county board of supervisors levies the ad valorem tax rate for the upcoming fiscal year, including setting the rate for local school districts, at its regular September meeting each year. Miss. Code Ann. § 27-39-317. Prior to this September meeting, the county must "hold a public hearing at which time the budget and tax levies for the upcoming fiscal year will be considered" in accordance with Section 27-39-203. This section also provides specific notice requirements for the public hearing and further states that "[a]ny governing body of a tax entity shall be prohibited from expending any funds for the applicable fiscal year until it has strictly complied with the advertisement and public hearing requirements set forth in this section." *Id.* at (9).

If it is later determined during the fiscal year that the ad valorem taxes to be collected are less than the amount requested in the school district budget, the school district may issue a shortfall note in accordance with Section 37-57-108. However, there is no procedure in the above-cited statutory schemes for the Board to amend the millage rate after it has been set and the new fiscal year has begun.

Your second question asks whether the Board can use funds generated from the general county special levy under Section 27-39-329(2)(b) to avoid or mitigate the School District having to issue a shortfall note under Section 37-57-108. Section 27-39-329(2)(b) requires each county to levy an ad valorem tax of one mill, which the county then holds in escrow until the Department of Revenue certifies that the county is in compliance with state reappraisal standards. Upon certification, the county may use the revenue from the levy for any purpose for which counties are authorized to levy ad valorem taxes. *Id.* Section 27-39-317 outlines the purposes for which ad valorem taxes may be used. With respect to school districts, this section provides as follows:

- (c) For schools, including the total funding formula levy and the levy for each school district including special municipal separate school districts, but not including other municipal separate school districts, and for an agricultural high

William C. Hammack, Esq.

December 16, 2025

Page 3

school, county high school or community or junior college (current expense and maintenance taxes), as authorized by Chapter 57, Title 37, Mississippi Code of 1972, and any other applicable statute. *The levy for schools shall apply to the assessed value of property in the respective school districts, including special municipal separate school districts, but not including other municipal separate school districts, and a distinct and separate levy shall be made for each school district, and the purpose for each levy shall be stated.*

*Id.* at (c) (emphasis added). In your request, you indicate that the School District is a consolidated district that does not encompass the entire County. Accordingly, ad valorem taxes collected pursuant to Section 27-39-329(2)(b), which are collected from the entire County, cannot be used to avoid or mitigate the School District having to issue a shortfall note under Section 37-57-108.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: /s/ Beebe Garrard

Beebe Garrard  
Special Assistant Attorney General

OFFICIAL OPINION