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Opinion No. 86-151

August 20, 1987.

Honorable Ron Fields
Prosecuting Attorney
Twelfth Judicial Circuit
Sebastian County Courthouse
Fort Smith, AR 72901

Re: Sebastian County Assessment Question

Dear Mr. Fields:

This is in response to a request for an official opinion from your Deputy David P. Saxon inquiring for Dr. C.B. Garrison, then superintendent of schools for the Fort Smith School District, on the following question:

Can the millage rate be corrected to 31.6 mills? If so, what is the procedure for making the correction?

If I understand the facts correctly, this question came after the assessment contractor's report in Sebastian County showed an assessment of \$323,003,109.00 for real estate property in the Fort Smith School District. A millage levy of 30.3 mills for the Fort Smith School District was granted based upon that assessment. Subsequently, the assessment was reduced to \$307,795,450.00. To maintain the same level of funds for the Fort Smith School District the levy would have to be 31.6 mills based on the revised figures. The difference between 30.3 mills and 31.6 mills of the revised figures is \$400,000.00. The question for the Fort Smith School District is can the 30.3 millage rate already set be altered and corrected to 31.6 mills in order to retain the expected funding which was based upon the incorrect original assessment figures.

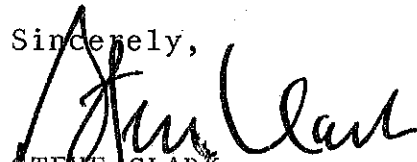
It is my opinion that Amendment 59 to the Arkansas Constitution does not allow for any correction in the millage rates to be made after already set except by

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election of the people. This precise question was addressed by the Arkansas Supreme Court in Hot Springs School District No. 6, et al. v. Earl R. Wells, Garland County Judge, et al., 281 Ark. 303, 663 S.W.2d 733. See attached copy. There the trial judge found that there was no authority for county officials to adjust the millage rates. The Supreme Court upheld the ruling of the trial judge. Therefore, it is my opinion that millage rates cannot be corrected in the Fort Smith school district to 31.6 mills after they had already been set at 30.3 mills.

The foregoing opinion, which I hereby approve, was prepared by Assistant Attorney General Jerome T. Kearney.

Sincerely,


STEVE CLARK
Attorney General

SC/JTK/pw