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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

TROY KING  
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Honorable William W. Sanderson, Jr.  
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200 West Side Square  
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Schools – Ad Valorem Taxes – Education,  
Boards of – Municipalities – Madison  
County – Limestone County

The three mill district tax for school purposes levied and collected on property located in that portion of Limestone County now within the corporate limits of the City of Madison, which is currently being retained by the Limestone County Board of Education, should be paid over to the Madison City School System as the children residing in that newly incorporated area now attend Madison City Schools.

Dear Mr. Sanderson:

This opinion of the Attorney General is issued in response to your request on the behalf of the City of Madison Board of Education.

**QUESTION**

When the provisions of sections 16-13-180 and 16-13-198 are read together, whether the proceeds from the special 3 mill district ad valorem school tax levied in the part of Limestone County that is within the City of Madison must be distributed to the City of Madison Board of Education.

**FACTS AND ANALYSIS**

The Madison City School System was created in 1998. Although most of the system lies within Madison County, a portion of the Madison city limits extends into Limestone County. Three mills of district ad valorem school taxes are collected in the portion of Limestone County that falls within the city limits of Madison, and the funds collected are paid over to the Limestone County Schools.

At the time the three mill district tax for school purposes was levied, the City of Madison Board of Education did not exist. Limestone County children residing in that portion of Limestone County now within the corporate city limits of Madison attended Limestone County schools. These children now attend Madison City Schools. Similarly, the children residing in the City of Madison located in Madison County attended Madison County Schools. At that time, Madison County Schools received all of the special district ad valorem tax levied and collected on property located in the portion of the City of Madison within Madison County. At the present time, the Madison City School System receives all the special district ad valorem tax levied for public school purposes on property located in that portion of the City of Madison within Madison County.

The district ad valorem tax was levied pursuant to sections 16-13-180 and 16-13-188 of the Code of Alabama and read, in pertinent part, as follows:

Upon a petition signed by 200 or more qualified electors of any county to the county commission, said county commission shall order an election to be held at the time specified in said petition to determine whether or not a special tax shall be levied for public school purposes within said county; and, upon request of the county board of education to the county commission, said court shall order an election to be held at the time requested by the said board of education to determine whether or not a special tax shall be levied for public school purposes within any school tax district in the county under the control of such board; and, upon the request of any city board of education to the county commission, said court shall order an election to be held at the time requested by said board of education to determine whether or not a special tax shall be levied for public school purposes within said city.

The county commission shall declare the result of the election; and, where the electors have voted so as to require the levy of a tax, the county commission shall levy said special tax and cause the tax assessor to assess the same on the taxable property in said county or in said rural or city school tax district, as the case may be, which shall not exceed \$.30 on each \$100.00 worth of taxable property in said county or in said rural or city school tax district, as the case may be. Any special tax levied hereunder shall not be for a shorter term than two years. In all elections hereafter held, if the specific purposes for which said tax, when levied, shall be used is printed on the ballots to be used in said election, it shall be unlawful for the county board of education to apply it to any other purpose.

ALA. CODE § 16-13-188 (2001).

As a district ad valorem tax, the distribution of the three mill tax is governed by section 16-13-198 of the Code, which reads as follows:

The funds arising from levying a special tax for school purposes in any school tax district under the jurisdiction of the county board of education shall be used for the exclusive benefit of the public schools of such districts; provided, that in any school tax district where such tax is being levied there is no public school, the funds arising from levying said tax may be used for the purpose of transporting school children residing in such district to a school located in another district. In the case of cities and towns under independent boards, said county tax collector shall collect said taxes and pay over the same to the treasurer of said city or town to be used for the exclusive benefit of the schools thereof in accordance with the law.

ALA. CODE § 16-13-198 (2001).

A question similar to the one raised in this opinion was addressed in a prior Attorney General's Opinion, No. 86-00301. That opinion opined that section 16-13-199 provides for the distribution of the taxes collected when the city assumes control of the school system. The opinion stated as follows:

Section 16-13-199 appears to contemplate that when authority over a certain area is transferred from a county board of education to a city board of education, the taxes that are already levied therein are automatically paid to the city school system without the necessity of a new election regarding said taxes in the district, as is required for the initial levy by §16-13-180 et seq., Code of Alabama 1975. Although the transfer of authority addressed in the statute is occasioned by the city's reaching a population of 5,000, the same result should follow where the transfer of authority is occasioned by the city's annexation of new territory.

Opinion to Honorable Hovey Cromer, Tax Collector, Tallapoosa County, dated July 10, 1986, A.G. No. 86-00301.

Section 16-13-199 of the Code, in its entirety, reads as follows:

When a municipality under the jurisdiction of a county board of education attains a population of 5,000 or more, according to the last decennial or any subsequent federal census, the schools of the municipality may remain under control of the county board by agreement between that board and the city council of the municipality, which agreement shall be expressed in resolutions adopted by and spread upon the minutes of the two authorities. If the municipality does not enter into such an agreement, the control of the school or schools of the territory within the municipality shall be vested in a city board of education, and thereafter the district school tax collected in the city shall be paid over to the custodian of city school funds, and the district school tax collected in the contiguous territory shall be paid over to the custodian of county school funds; provided, that so much of the proceeds of the special school tax collected in the original school tax district as may be required for the retirement of outstanding warrants issued against such tax, including the interest thereon, shall be paid over to the proper official or authority to be used for such purpose.

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**CONCLUSION**

It is the opinion of this Office that the three mill district tax for school purposes levied and collected on property located in that portion of Limestone County now within the corporate limits of the City of Madison, which is currently being retained by the Limestone County Board of Education, should be paid over to the Madison City School System as the children residing in that newly incorporated area now attend Madison City Schools.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Gwendolyn B. Garner, Legal Division, Department of Revenue.

Sincerely,

TROY KING  
Attorney General  
By:

  
BRENDA F. SMITH  
Chief, Opinions Division

TK/GBG

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