

## Frequently Asked Questions

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### 1. A. I need to purchase buses – What are my options to obtain financing other than the operating budget to make purchase?

#### Answer:

- a. 3 Mill Notes – Sections 37-59-101 et.al (General Debt Statutes)
- b. Lease Purchase (pledging EEF or operating funds) – Section 31-7-113(e)

(Be sure that purchasing of buses is included in the purposes that are advertised in order to use the proceeds of any of the above).

### B. I need to purchase buses – What are my options for financing them if I can make the payments from existing operating funds?

#### Answer:

- a. Transportation Notes – Sections 37-41-89 through 37-41-101
- b. Sixteenth Section Principal Funds (If available) – Section 29-3-113 (10 years)

### C. What procedure do I use to purchase buses?

#### Answer:

MDE Bids Buses – School District must obtain MDE approval before ordering buses – Section 37-41-101

### 2. A. I need additional classrooms or to build a school? – What are my options to obtain financing other than the operating budget and EEF-Building and Bus Funds to make purchase?

#### Answer:

- a. 3 Mill Notes – Sections 37-59-101 et.al (General Debt Statutes)
- b. Bond Issue Proceeds – Sections 37-59-1 et.al (General Debt Statutes)

(Be sure that additions to buildings are included in the purposes that are advertised in order to use the proceeds of any of the above).

### B. What are my options for financing them if I can make the payments from existing operating funds?

#### Answer:

- a. Certificates of Participation – Sections 37-7-351 -37-7-359
- b. Sixteenth Section Principal Funds (If available) – Section 29-3-113 (20 years)

### 3. May I build a Central Office using proceeds from a Sixteenth Section loan?

**Answer:** Per MS AG Op., Sanders (May 31, 1988), “It is therefore the opinion of the Attorney General that a school district may not use proceeds derived from the sale of sixteenth section lieu lands pursuant to

§ 29-3-19 of the Miss. Code for the purchase of a building which will serve as the school district's administrative offices as well as generate rental income. We would point out that under § 29-3-113 any officer concerned in making a loan or investment in violation of the provisions of that section may be liable personally and upon his official bond for the safety of the funds so loaned.”

**4. May I build a transportation facility with proceeds from a Sixteenth Section loan?**

**Answer:** Per MS AG Op., Dedeaux, No. 2008-00528, “The borrowing of money from the Sixteenth Section Principal Fund to purchase real property, including an existing building, to be used as a Transportation Facility for the school district is not included in any of the approved purposes for which Sixteenth Section Principal Funds may be borrowed under Section 29-3-113. The statute allows for the borrowing of Sixteenth Section Principal Funds for the erection, equipment or repair of said "district schools" but does not allow the borrowing of the principal funds for the erection, equipment or repair of related facilities, such as a Transportation Facility.”

**5. What is a QSCB? How are they issued?**

A QSCB is a Qualified School Construction Bond that has been authorized by the IRS. It allows the district to either pay less interest to the lending institution or obtain a subsidy from the IRS for interest paid on the QSCB. These notes must be issued using current borrowing authority such as a 3 Mill Note or a Certificate of Participation. Due to the IRS’s favorable treatment, projects utilizing these funds must follow the Davis-Bacon Act, which requires the contractors to pay “prevailing wages” to its employees based on established pay rates for the job classification. District using QSCBs have internal control responsibilities related to checking and maintaining these payroll records provided by the contractor. It is highly recommended that the District work with its architect to make sure this provision is included in the contracts.

**6. If I discover that I do not have enough cash to get through the year, how do I borrow the funds?**

Tax Anticipation Loans are used for this purpose. They must be repaid within fourteen months and are designed to allow a district to borrow funds in anticipation of property taxes being paid – normally in January – March of the year. District may choose to use the Mississippi School Board Association’s Program or can obtain financing through local banks. Section 37-59-47.

**7. What do I do if the district does not receive the tax revenue requested by June 30 for the current budget year?**

Sections 37-57-108 and 27-39-333 give school districts the authority to issue tax shortfall notes if the amount of local revenue budgeted is not received by June 30. This is normally used for ad valorem revenue that is not collected from the taxing authority. If the tax shortfall loan is not used, this can reduce the “base” for the ad valorem tax calculation.

**8. What do I do if the levying authority refuses to levy the taxes requested?**

Depending on the circumstances, there are cases where legal action may be required. (MS AG Opinion 2009-00526) explains the legal obligations as follows:

**AG Opinion 2009-00526  
Issues Presented**

1. Whether the Board of Supervisors is required by law to levy sufficient **tax** to generate requested funds for the school district budget?
2. If the response to question one is yes, what is the penalty if the Board refuses to do so?

## Response

1. Yes. It is the opinion of this office that where the amount is included in the certified copy of the order adopted by the school board, submitted to the levying authority pursuant to Section 37-61-9, the levying authority shall determine the millage rate necessary to generate funds equal to the dollar amount requested by the school board.
2. The statutes do not provided a specific penalty. The school district or other interested party may wish to seek relief in a court of competent jurisdiction.

## Background Information

In your letter, [\*2] you indicated that the **Carroll County** Board of Supervisors has refused to levy the millage necessary to generate funds equal to the dollar amount of the **Carroll County** School District's budget request, which was approved by the school board.

## Applicable Law and Discussion

Section 37-57-104 of the Mississippi Code Annotated (1972) provides in part:

(1) Each school board shall submit to the levying authority for the school district a certified copy of an order adopted by the school board requesting an **ad valorem tax** effort in dollars for the support of the school district. The copy of the order shall be submitted by the school board when the copies of the school district's budget are filed with the levying authority pursuant to Section 37-61-9. **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. For the purpose of calculating this millage rate, any additional amount that is levied pursuant to Section 37-57-105(1) to cover anticipated delinquencies and costs [\*3] of collection or any amount that may be levied for the payment of the principal and interest on school bonds or notes shall be excluded from the limitation of fifty-five (55) mills provided for in subsection (2) of this section.**

(2)(a) Except as otherwise provided under paragraph (b) or (c) of this subsection, if the millage rate necessary to generate funds equal to the dollar amount requested by the school board is greater than fifty-five (55) mills, and if this millage rate is higher than the millage then being levied pursuant to the school board's order requesting the **ad valorem tax** effort for the currently existing fiscal year, then the levying authority shall call a referendum on the question of exceeding, during the next fiscal year, the then existing millage rate being levied for school district purposes. The referendum shall be scheduled for not more than six (6) weeks after the date on which the levying authority receives the school board's order requesting the **ad valorem tax** effort.

Paragraph b of Miss. Code Section 37-57-1 states that the term "levying authority" means the **county** board of supervisors.

In [\*4] response to your first question, pursuant to Section 37-57-104, the school board shall request an **ad valorem tax** effort in dollars for the support of the school district ("district"). Upon receipt of the district's request, the levying authority shall determine the millage rate necessary to generate funds equal to the dollar amount requested by the school board.

With respect to your second question, we find no specific penalty set out in statute for failure to enact a sufficient levy. The school district or other interested parties might appeal a Board of Supervisors' action by filing a bill of exceptions and might seek equitable relief in the form of mandamus or injunction.

## Conclusion

Accordingly, where the amount is included in the certified copy of the order adopted by the school board, filed with the levying authority pursuant to Section 37-61-9, the levying authority shall determine the millage rate necessary to generate funds equal to the dollar amount requested by the school board.