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**Office of Legislative Counsel
General Assembly of Georgia**

October 21, 2015

Honorable Elena Parent
Senator, District 42
321-B Coverdell Legislative Office Building
Atlanta, GA 30334

Dear Senator Parent:

This letter is in response to your request for an opinion on the legality of imposing ad valorem millage rate caps in municipal charters. These caps usually take the form of a provision that limits the millage rate that a municipality may impose without some further action being taken, such as approval of an increase in the cap by the voters of the municipality in a referendum. A millage rate cap shares some aspects of a "city lite," which is a term commonly used to denote a municipality which is created with the intention that the municipality provide only a limited number of services to reduce the cost of operating the municipality. As you know, I have previously expressed some reservations in hearings before the Senate Annexation, Deannexation, and Incorporation Study Committee which you chair about the "city lite" concept. Like a "city lite," a millage rate cap is designed also to limit the burden on the taxpayers of a municipality and to reduce the scope of government of a municipality by reducing the funds available to the municipality.

However, there are differences between the "city lite" concept and millage rate cap provisions. The "city lite" provisions purport to give a municipality all of the powers of a full-fledged municipality, but condition the use of certain powers upon certain procedural actions, such as seeking the approval of the voters of the municipality. As I have previously stated before your study committee, the device of requiring referendum approval before exercising a power by a municipality seems to me to be imposing a limitation on the powers of such a municipality through a local law which would appear to run afoul of Article IX, Section II, Paragraph III(c) of the State Constitution. That provision of the State Constitution prohibits the General Assembly from limiting by local law certain supplementary powers

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which are enumerated in subparagraph (a) of that provision. Any limitation or regulation of such supplementary powers can only be accomplished by general law. It would be difficult to say that such "city lite" limitation does not, in actuality, regulate, restrict, or limit the exercise of the powers by a municipality by local law and thereby would contravene the constitutional provision.

The millage cap provision does not fall within the same analysis as the "city lite" concept since ad valorem taxation is not one of the supplementary powers enumerated in Article IX, Section II, Paragraph III(a) of the State Constitution. Consequently, the prohibition regarding the regulation of such taxation through a local law does not appear to be applicable to ad valorem taxation.

It is instructive that the Attorney General, when asked if a municipality which had a millage rate cap in its charter could remove such cap through its municipal home rule powers, did not question the legality of such a millage rate cap. Op. Att'y Gen. U83-191. Instead, the Attorney General accepted the legality of the cap and analyzed the question based upon whether the municipality was prohibited from removing such millage rate cap by O.C.G.A. § 36-36-6. That Code section contains limitations on the use of home rule power by municipalities and expressly limits municipalities from taking any action under home rule regarding, among other things, "adopting any form of taxation beyond that authorized by law or by the Constitution". The Attorney General interpreted the language "form of taxation" to mean a type of taxation, such as ad valorem taxation, and not to mean limitations on a type of taxation, such as a millage cap. The Attorney General then concluded that the municipality had the power under home rule to remove the millage rate cap from its charter.

Therefore, it appears that millage rate caps are permissible with the caveat that they are subject to being removed by the municipality under its home rule powers.

I trust that this has been responsive to your inquiry.

Sincerely,



H. Jeff Lanier
Deputy Legislative Counsel

Approved for release: 