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HENRY MCMASTER
ATTORNEY GENERAL

July 27, 2006

The Honorable James H. Harrison
Member, House of Representatives
P. O. Box 11867
Columbia, South Carolina 29211

Dear Representative Harrison:

In a letter to this office you referenced a recently enacted provision amending S.C. Code Ann. § 61-6-2010 which deals with the issuance of a temporary permit allowing the possession, sale, and consumption of alcoholic liquors by the drink to "bona fide nonprofit organizations and business establishments otherwise authorized to be licensed for sales." Such provision was included in Act No. 386 which took effect June 14, 2006. As stated by you, such legislation authorizes a county or a municipality governing body to call a referendum as to the issuance of temporary licenses by passing an ordinance calling for the referendum. This ordinance method is in addition to the preexisting petition method. A county or municipality may, in its discretion, use either method. Such provision states

> (4) In addition to the petition method of calling the referendum provided for in item (1) of this subsection,[1] a county or municipal governing body by ordinance may also call the referendum. Upon receipt of a copy of the ordinance filed with the county or municipal election commission at least sixty days before the date of the next

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[1]Subsection (C)(1) of such provision states that "[a] permit authorized by this section may be issued only in those counties or municipalities where a majority of the qualified electors voting in a referendum vote in favor of the issuance of the permit. The county or municipal election commission, as the case may be, shall conduct a referendum upon petition of at least ten percent but not more than seven thousand five hundred qualified electors of the county or municipality, as the case may be." Additionally, pursuant to subsection (D)(1), "[a] municipal governing body may order a referendum on the question of the issuance of temporary permits to allow the possession, sale, and consumption of alcoholic liquors by the drink...(where)...(a) parts of the municipality are located in more than one county; (b) as a result of a favorable vote in a county referendum held pursuant to this section, permits may be issued in only the parts of the municipality located in that county; and (c) the proposed referendum would authorize issuance of permits in the remaining parts of the municipality."

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> general election, the commission shall conduct the referendum in the manner provided in this section at that general election. The provisions of this item are in addition to the authority of a municipal governing body to call for a referendum under the circumstances enumerated in subsection (D).

You indicated that at least one county is seeking to use this method of calling the referendum to approve the issuance of the temporary permits. Referencing such you have raised the following questions:

> 1. Can a county and a municipality within that county both call for a referendum using the new process in the same general election?
>
> 2. Would each entity be required to ask the question separately on the ballot, i.e., one question for approval in the county and one question for approval in the municipality?
>
> 3. How would the following scenarios be handled:
>
> > a. Voters approve the referendum in the county but not the municipality.
> >
> > b. Voters approve the referendum in the municipality but not the county.
>
> 4. In either of the above instances, what areas, if any, can have the temporary license issued?

As noted in a prior opinion of this office dated May 1, 1990, "...because local option legislation is rare in South Carolina, there...exists no authoritative judicial precedents that instruct as to how the courts of this State would approve the inevitable question that arise when...(legislation such as the above)...is actually applied." Also, similar to the situation addressed in the 1990 opinion, there is no significant legislative history that is helpful in resolving your questions.

Generally, when interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning

and statutes should be given a reasonable and practical construction which is consistent with the policy and purpose expressed therein. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991); Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966). In other words, the clear and unambiguous words in a statute should be given their plain and ordinary meaning. Brown v. County of Berkeley, 366 S.C. 354, 360, 622 S.E.2d 533, 537 (2005). Therefore, courts must apply the plain meaning of a statute when its language is unambiguous and conveys a clear meaning. Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002).

As set forth, the recent amendment to Section 61-6-1020(C) plainly states that its provisions are "[i]n addition to the petition method for calling the referendum...." It also states that "a county or municipal governing body by ordinance may also call the referendum...." Citing the plain and ordinary meaning of such emphasized terms, the clear inference is that a new method for calling the referendum authorizing a temporary permit allowing the possession, sale, and consumption of alcoholic liquors by the drink has been provided, a method that allows for the call of the referendum by either a county or a municipality. As a result, in my opinion, either the municipality or the county may call the referendum or both could call for such. It has been determined that the word "or" may be construed as meaning "and". State v. Circuit Court of Dodge County et al., 186 N.W. 732 (Wis. 1922); Spillman v. Spillman, 84 So. 489 (La. 1920); Smiley v. Lenane, 1 N.E.2d 213 (Ill. 1936). Therefore, as to your first question of whether a county and a municipality within that county could both call for a referendum using the new process in the same general election, in my opinion, both the county and a municipality could call for a referendum.

As to your next question of whether each entity would be required to ask the question separately on the ballot, i.e., one question for approval in the county and one question for approval in the municipality, in my opinion, each question would be asked separately inasmuch as both a county and municipality could call the referendum.

You next asked how would the following scenarios be handled, voters approve the referendum in the county but not the municipality or voters approve the referendum in the municipality but not the county. You also asked whether in either of the above instances, what areas, if any, can have the temporary license issued. In my opinion, inasmuch as the newly enacted provision allows for the calling of the referendum by either a municipality or a county, or both, if the voters approve the referendum in the county but not the municipality, then the permits authorized by the referendum would be issued only in the unincorporated areas of the county. Likewise, if the voters approve the referendum in the municipality but not the county, the permits authorized by the referendum could only be issued in the municipality. This restriction on the applicability of a favorable vote would be consistent, in my opinion, with the stated purpose of the newly enacted amendment of providing a method of calling the referendum by a county or a municipal governing body, a method in addition to the previously authorized petition method for calling a referendum. The provision in subsection (D) of Section 61-6-2010 which provides for a referendum on the question of the issuance of temporary permits following a favorable vote in a county which impacts

on a municipality, parts of which are located in more than one county, is inapplicable to the question inasmuch as newly enacted subsection (C)(4) specifically states that "[t]he provisions of this item are in addition to the authority of a municipal governing body to call for a referendum under the circumstances enumerated in subsection (D)." (emphasis added).

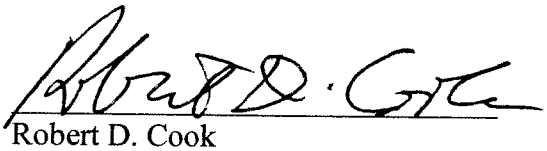
The above response is our best reading of the newly enacted provision. I caution that the provision lacks clarity and any ambiguity could be addressed by further legislative clarification.

With kind regards, I am,

Very truly yours,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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