HENRY MCMASTER
ATTORNEY GENERAL

December 21, 2009

Marvin C. Jones, Esquire
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Dear Mr. Jones:

We understand from your letter that as the Attorney for Jasper County (the "County") you wish to request an opinion on the County's behalf concerning section 48-23-260 of the South Carolina Code. Specifically, you ask the following three questions.

> 1. What is meant by the term "general school purposes?" The phrase is used in the statute but is not otherwise defined. We have noted that the phrase has occasionally been used in prior opinions of the Attorney General but as far as we could find, never in the context of this statute and it has never been defined in a general way.
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> 2. May Jasper County Council appropriate these funds to General School purposes according to its determination of priorities or must the funds be paid over to the School Board?
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> 3. In light of home rule, does the last paragraph of Section 48-23-260 retain any vitality?

Law/Analysis

Section 48-23-260 of the South Carolina Code (2008) requires the State of South Carolina to pay a portion of the proceeds received from State forest land to the county in which the land is located. According to this provision:

> The funds herein provided for shall be spent for general school purposes. Where a particular State forest lies in more than one county or school district, the funds derived from such State forest and to be paid by the State Treasurer shall be apportioned on the basis of land acreage involved. All funds distributed under the provisions of

> this section shall be spent upon the approval of a majority of the county legislative delegation, including the Senator.

S.C. Code Ann. § 48-23-260 (emphasis added).

Initially, you ask us to interpret what is meant by the phrase "general school purposes" in this provision. As you mentioned, neither section 48-23-290, nor any other related provision, appear to define this term. Thus, we must employ the rules of statutory interpretation to determine its meaning.

Our Supreme Court recently explained the basic rules of statutory interpretation as follows:

> The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000). The Court should give words their plain and ordinary meaning, without resort to subtle or forced construction to limit or expand the statute's operation. Sloan v. S.C. Bd. of Physical Therapy Exam'rs, 370 S.C. 452, 469, 636 S.E.2d 598, 607 (2006).

SCANA Corp. v. South Carolina Dept. of Revenue, 384 S.C. 388, 392, 683 S.E.2d 468, 470 (2009).

As you mentioned in your letter, several prior opinions of this Office interpret what is meant by the phrase "school purposes" as used in other statutes. In a 1962 opinion, this Office discussed whether a statute that allowed State surplus funds to be used "for general public school purposes" applied to allow a county to use such funds to construct a technical education center. Op. S.C. Atty. Gen., October 15, 1962. In the opinion, we determined that a technical education center is not a general public school purpose. Id. We noted that at the time the statute was enacted "Technical Training Centers had not been devised, and it must, therefore, be assumed that the General Assembly used the phrase in its commonly accepted connotation. It is generally accepted that the public school system embrasures those schools under the supervision of the State Board of Education and the County Boards of Education." Id. In addition, we cited to Supreme Court decisions finding "public schools" means "'common schools', and include high schools and graded schools." Id. (quoting Powell v. Hargrove, 136 S. C. 345, 134 S. E. 380 (1926). Cf. Varn vs. Beattie, 171 S. C. 424, 172 S. E. 442 (1934). Based on this decision, provisions in the Constitution, and statues containing the term "public school purposes," we concluded

> the General Assembly in 1954 used the phrase 'general public school purposes' in the light of circumstances as they existed at that time and such phrase was intended to mean, and to relate only to schools provided for under the general statutes of this State, contained principally in Title 21 of the 1952 Code of Laws, and consisting of those schools which function under the Boards of Trustees, County Boards of Education and the State Superintendent of Education.

Id.

In 1976, we interpreted a statute calling for the levy of a one-cent sales tax to be used "exclusively for public school purposes." Op. S.C. Atty. Gen., September 10, 1976. To understand the meaning of the term "public school purposes," we looked to the 1976 appropriations act for the support of the public school system and found a listing of agencies and purposes for which appropriations were made. Based on these, we concluded that any of the items for which the General Assembly made appropriations under this provision constitute items for which the one-cent sales tax can be used for. Id.

Although, we were unable to find a court decisions interpreting the phrase "general school purposes" pursuant to section 48-23-290, we located a South Carolina Supreme Court opinion discussing what is meant by the use of "school purposes" as used in a statute exempting manufacturers from taxation except those taxes levied for school purposes. John D. Hollingsworth on Wheels, Inc. v. Greenville County Treasurer, 276 S.C. 314, 278 S.E.2d 340 (1981). The Court determined that taxes levied for a library and museum "are not taxes for a school purpose nor school taxes." Id. at 319, 278 S.E.2d at 343. The Court further explained:

> The library and museum satisfy recreational and social needs as well as educational needs. However, they are not schools and they do not serve a school purpose. We hold in order to qualify for an exception as a school purpose or tax, the entity for which the tax is levied must be predominantly concerned with schooling. This emphasis on schooling is not present here.

Id.

Compiling a comprehensive list of what may or may not be considered to be a general school purpose would require us to make numerous factual determinations, which are beyond the scope of an opinion of this Office. Op. S.C. Atty. Gen., August 27, 2009 ("This Office, unlike a court, does not have the jurisdiction to investigate and determine factual issues."). Thus, we find it more appropriate for a court to make decisions as to whether or not a particular expenditure serves a general school purpose. Nonetheless, we believe the opinions and the case cited above prove helpful in indicating what a court may consider in making this determination. While these opinions and the

case do not specifically deal with section 48-23-260, we believe that the plain and ordinary meaning of the phrase "general school purposes" indicates that the expenditure must be predominately concerned with schooling. Moreover, we are of the opinion that a court would be more likely to find that an expenditure is for a general school purpose it if serves an agency or purpose generally served by the public school system. Thus, while we cannot definitively define general school purpose with regard to section 48-23-260, we hope that these factors will provide some guidance to you.

Next, you question whether the County may appropriate the funds or whether the funds must be paid over to the School Board. To answer this question, we must again employ the rules of statutory interpretation. Section 48-23-260 does not mention school boards, but simply states that the State Treasurer "shall pay to any county" those funds specified in this statute. While section 48-23-260 clearly requires these funds be used for "general school purposes," it does not specify that those funds be paid directly to schools or school districts. As such, we gather from the plain language used in section 48-23-260 that County Council is not necessarily required to pay funds received pursuant to this provision directly to the School Board.

Lastly, you question the validity of the last sentence in section 48-23-260, which requires that all funds distributed pursuant to this provision be spent only upon "the approval of a majority of the county legislative delegation, including the Senator." Initially, we must point out that laws enacted by the Legislature are presumed constitutional. According to our Supreme Court: "A court will declare a statute unconstitutional if its repugnance to the Constitution is clear and beyond reasonable doubt." Se. Home Blgd. & Refurbishing, Inc. v. Platt, 283 S.C. 602, 603, 325 S.E.2d 328, 329 (1985). Moreover, only a court, not this Office, may declare a statute unconstitutional. Op. S.C. Atty. Gen., March 27, 2006. Thus, regardless of our opinion as to the constitutionality of section 48-23-260, unless and until a court declares this legislation unconstitutional, it remains valid and in effect.

Specifically, you ask what impact Home Rule may have on this requirement. However, as explained by our Supreme Court in Town of Hilton Head Island v. Morris, 324 S.C. 30, 34, 484 S.E.2d 104, 106 (1997):

> Under Home Rule, the General Assembly is charged with passing general laws regarding the powers of local government. S.C. Const. art. VIII, § 7 (counties); § 9 (municipalities). The authority of a local government is subject to the general laws passed by the General Assembly. See S.C.Code Ann. § 5-7-30 (municipalities); § 4-9-30 (counties) (Supp.1995). The General Assembly can therefore pass legislation specifically limiting the authority of local government.

Accordingly, we are not aware of any reason under the Home Rule amendments that would prevent the county legislative delegations from approving funds received under section 48-23-260.

Nonetheless, we recognize that this requirement may create a conflict with the separation of powers provision in the South Carolina Constitution.

On several occasions, the South Carolina Supreme Court determined statutes requiring legislative delegation approval in particular circumstance violate article I, section 8 of the South Carolina Constitution. Article 1, section 8 states: "In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." In Bramlette v. Stringer, 186 S.C. 134, 195 S.E. 257 (1938), the Supreme Court considered a statute that authorized a county board of commissioners to issued bonds to fund improvements to county roads, but gave authority to the legislative delegation to determine the amount of the bonds, the method of selling the bonds, and which roads were to be constructed or improved. Id. The Court found that although the Legislature itself could specify the amount, choose the method by which the bonds were sold, and designate the roads, the legislative delegation cannot. Id. at 136-37, 195 S.E. at 258. The Court clarified "any action now on the part of the Greenville County Legislative Delegation, pursuant to said act, cannot amount to the enactment of legislation, and if said act was incomplete when it came from the hands of the Legislature, it cannot be finished by the Greenville County Legislative Delegation in the manner provided for in said act." Id. at 137, 195 S.E. at 258. Based on the separation of powers provision in the Constitution, the Court ultimately concluded that giving such authority to the legislative delegation was unconstitutional. Id.

In Gould v. Barton, 256 S.C. 175, 181 S.E.2d 662 (1971), the Supreme Court addressed the validity of legislation requiring a legislative delegation to approve a special purpose district's budget. The Court stated as follows:

> The power to approve the budget of the commission carries with it the power to disapprove until the budget conforms to the legislative wish, and thereby places in the Legislative Delegation control of the administration of the funds of the commission. Under the principles announced in Bramlette v. Stringer, 186 S.C. 134, 195 S.E. 257, such portion of Act No. 323 is unconstitutional and void.

Id. at 201-02, 181 S.E.2d at 674.

In Gunter v. Blanton, 259 S.C. 436, 192 S.E.2d 473 (1972), the Supreme Court considered the validity of a statute giving a legislative delegation the authority to approve or disapprove tax increases adopted by a school board. The Court acknowledged the Legislature's authority to levy taxes. Id. at 441, 192 S.E.2d at 474. However, the Court stated as follows with regard to the legislative delegation's ability to approve any tax increases adopted by the school board:

> This in effect, constituted the County Legislative Delegation a committee of the Legislature to determine not only when a tax increase was proper but also to take such action with regard to the increase as that committee might deem proper.
>
> That the determination of the amount of the tax levy in the school district may be a legislative function delegable to the corporate authorities of the School District under Article X, Section 5 of the Constitution is beside the point. The Act does not and can not authorize the members of the delegation to participate in this determination as legislators, for they may exercise legislative power only as members of the General Assembly.
>
> To authorize them to participate as corporate authorities of the school district, as the Act attempts to do, clearly assigns to them a dual role in violation of the separation of powers clause of the Constitution.

Id. at 441, 192 S.E.2d at 475.

In Aiken County Bd. of Ed. v. Knotts, 274 S.C. 144, 262 S.E.2d 14 (1980), the Supreme Court again struck down legislation requiring legislative delegation approval of the millage levied by a school board. The statute gave the school board the authority to authorize the assessment of millage to meet its budgetary requirements, but required the legislative delegation to have approval authority over any increases in such tax millage. Id. at 147, 262 S.E.2d at 15. The Court held:

> As a general rule, the Legislature may not, consistently with the constitutional requirement here involved, undertake to both pass laws and execute them by setting its own members to the task of discharging such functions by virtue of their office as legislators. Spartanburg County v. Miller, 135 S.C. 348, 132 S.E. 673 (1924). The Legislature may properly engage in the discharge of such functions to the extent only that their performance is reasonably incidental to the full and effective exercise of its legislative powers. Id. As the functions of the Legislative Delegation in this instance are not incidental to or comprehended within the scope of legislative duties, the separation of powers doctrine as provided by Article I, section 8 has clearly been violated.

Id. at 149-50, 262 S.E.2d at 17.

Similarly, in South Carolina Department of Highways and Public Transportation, 309 S.C. 395, 424 S.E.2d 468 (1992), the Supreme Court found the requirement that the legislative delegation

approve the expenditure of highway construction funds unconstitutional. Citing many of the cases mentioned above, the Court explained:

> We have long held that legislative delegates may exercise legislative power only as members of the General Assembly enacting legislation. By constitutional mandate, the legislature may not undertake both to pass laws and to execute them by bestowing upon its own members functions that belong to other branches of government. Aiken County Bd. of Ed. v. Knotts, 274 S.C. 144, 262 S.E.2d 14 (1980); Gunter v. Blanton, 259 S.C. 436, 192 S.E.2d 473 (1972). Action by a legislative delegation pursuant to a complete law cannot qualify as action to enact legislation and is therefore constitutionally invalid. Bramlette v. Stringer, 186 S.C. 134, 195 S.E. 257 (1938); see also Dean v. Timmerman, 234 S.C. 35, 106 S.E.2d 665 (1959).
>
> Accordingly, we declare unconstitutional the provisions of § 12-27-400 requiring approval of a county's legislative delegation for the expenditure of "C" construction funds and allowing the delegation to contract for improvements.

Id. at 396, 424 S.E.2d at 469.

Section 48-23-260 requires legislative delegation approval for a county to spend the funds received under this provision. We do not believe that giving legislative delegations the authority to approve expenditures of forestry funds is incidental to or within the scope of their legislative duties. According to the authorities cited above, the Legislature cannot undertake to both pass and execute laws. Thus, a court could find the separation of powers doctrine as provided by Article I, section 8, has been violated by giving delegations such authority. Accordingly, we find the validity of the legislative approval requirement questionable. However, only a court can declare this portion of section 48-23-260 unconstitutional.

Conclusion

We cannot, in an opinion of this Office, provide a comprehensive list of what does and does not constitute general school purposes with respect to section 48-23-260. However, based on guidance provided by our Supreme Court and prior opinions of this Office, expenditures must be predominately concerned with schooling. In addition, a court may be more inclined to find an expenditure serves a general school purpose if it furthers a purpose generally served by the public school system. However, with regard to the County's use of the funds for general school purposes, based on the language provided in section 48-23-260, we do not believe the Legislature requires the County to pay these funds directly to the School Board. Rather, based on our reading of the statute, the County may expend these funds as long as they are expended for general school purposes.

In addressing your concern that the last sentence of section 48-23-260, requiring county legislative delegations to approve any expenditures of funds received by counties under section 48-23-260, we do not believe this portion of the statute runs afoul of the Home Rule amendments to the South Carolina Constitution. However, based on previous Supreme Court decisions, a court could conclude that by requiring legislative delegation approval for these expenditures, this portion of section 48-23-260 violates the separation of powers provision. Nonetheless, only a court can make this determination. Therefore, unless and until a court declares otherwise, this portion of section 48-23-260 remains valid.

Very truly yours,

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REVIEWED AND APPROVED BY:

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