

May 21, 2008

The Honorable Jimmy C. Bales  
Member, House of Representatives  
432-C Blatt Building  
Columbia, South Carolina 29211

Dear Representative Bales:

We received your letter requesting a follow-up opinion to an opinion issued by this Office on April 21, 2008 to Representative Ted Pitts concerning local option sales taxes. You state: "Richland County has a special one-cent sales tax to make up for the property tax reduction for school operations." Thus, you ask: "Can Richland County add another one-cent sales tax for a special purpose?"

#### **Law/Analysis**

In our April 21 opinion, we considered whether Lexington County could impose a one-percent sales and use tax to fund transportation facilities in addition to its existing one-percent sales and use tax imposed by special legislation of the General Assembly to off-set school property tax liabilities. We found no prohibition on imposing both taxes simultaneously. *Op. S.C. Atty. Gen.*, April 21, 2008. However, we determined that section 4-37-40 of the South Carolina Code (Supp. 2007) limits the amount of transportation tax a county may impose if the county has a sales and use tax imposed by special legislation. *Id.* Finding these combined taxes may not exceed one-percent and considering the fact that Lexington County already imposed a one-percent sales and use tax via special legislation, we determined that this provision effectively prevents Lexington County from imposing a transportation tax in addition to the sales and use tax imposed via special legislation. *Id.*

We understand that Richland County implemented a one-percent sales and use tax pursuant to article 1 of chapter 10 of title 4 of the South Carolina Code, rather than pursuant to special legislation passed by the General Assembly. The provisions of this article allow counties to levy a one-percent sales and use tax and use the revenue collected from these taxes to provide a credit against county and municipal property taxes. The provisions contained in this article do not indicate that the county is prohibited from or limited in its ability to impose sales and use taxes authorized by other provisions in the South Carolina Code.

Furthermore, section 4-37-30(A)(9) of the South Carolina Code, contained in the provisions governing the transportation tax, states in part “[t]he tax authorized by this section is in addition to all other local sales . . . .” However, as explained in our previous opinion, section 4-37-40 states: “At no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this chapter, Article 3, Chapter 10 of this title, or pursuant to any local legislation enacted by the General Assembly.” Chapter 37 governs only sales and use taxes imposed to fund transportation facilities. Article 3 of chapter 10 of title 4 contains provisions allowing counties to implement a one-percent sales and use tax for the specific purpose of raising revenue to fund a particular capital project. Richland County levied its current sales and use tax pursuant to article 1 of chapter 10 of title 4, not chapter 37 of title 4, article 3 of chapter 10 of title 4, or pursuant to special legislation passed by the General Assembly. Therefore, we do not believe the local sales and use tax levied by Richland County prevents it from also levying a transportation sales and use tax pursuant to chapter 37 of article 4.

In addition to chapter 37 of title 4 allowing counties to impose a sales and use tax for purposes of funding transportation facilities, we note other provisions of the Code also allow counties to impose local sales and use taxes. Article 3 of chapter 10 of title 4 contains provisions allowing counties to impose a one-percent sales and use tax to fund certain capital projects. Section 4-10-310 of the South Carolina Code (Supp. 2007), under this article, contains a limitation similar to that provided in section 4-37-40: “at no time may any portion of the county area be subject to more than one percent sales tax levied pursuant to this article, pursuant to Chapter 37 of Title 4, or pursuant to any local law enacted by the General Assembly.” However, as we previously determined, the sales and use tax imposed by Richland County is not authorized by article 3 of chapter 10 of title 4, chapter 37 of title 4, or special legislation. Thus, we do not believe Richland County’s current sales and use tax would prevent it from levying an additional sales and use tax pursuant to article 3 of chapter 10 of title 4.

Furthermore, article 5 of chapter 10 of title 4 permits counties to impose a sales and use tax of up to two-percent to offset a property tax exemption for motor vehicles, motorcycles, general aviation aircraft, boats, and boat motors. Section 4-10-580 of the South Carolina Code (Supp. 2007), as part of article 5, states “[t]he tax authorized by this article is in addition to all other local sales and use taxes . . . .” Thus, we do not believe Richland County is prohibited from levying additional sales and use taxes pursuant to these provisions.

Finally, article 7 of chapter 10 of title 4 allows counties to impose a sales and use tax of up to one-percent in order to provide a credit against property taxes imposed by political subdivisions. Like the tax authorized under article 5, the Legislature provides in section 4-10-770 of the South Carolina Code (Supp. 2007) that this tax “is in addition to all other local sales and use taxes . . . .” Accordingly, we again do not believe that Richland County is prohibited from levying both a sales and use tax pursuant to article 1 and a sales and use tax pursuant to this article.

### **Conclusion**

In our prior opinion, we concluded that the Legislature authorized Lexington County to impose a sales and use tax pursuant to special legislation. Thus, because section 4-37-40 limits the amount of transportation tax that may be imposed by the amount of tax imposed pursuant to local legislation, we concluded that Lexington County is effectively prohibited from levying a transportation tax.

With regard to Richland County, we understand that Richland County imposed its one-percent local option sales and use tax pursuant to article 1 of chapter 10 of title 4 of the South Carolina Code rather than pursuant to a local law passed by the General Assembly. Thus, the limitation contained in section 4-37-40 does not apply to Richland County. Therefore, Richland County may impose a separate transportation tax of up to one-percent. Furthermore, in our review of articles 3, 5, and 7 of chapter 10 of title 4, we do not believe Richland County is prohibited from imposing a sales or use tax authorized under these provisions based upon the one-percent sales and use tax currently in place. Of course, any decision to impose such additional sales and use taxes is a policy matter for Richland County and is not within the scope of this opinion, which examines only the legal authority to levy such a tax.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Deputy Attorney General