ALAN WILSON
ATTORNEY GENERAL

September 19, 2011

The Honorable Cheryl H. Morgan
Lancaster County Auditor
P.O. Box 2016
Lancaster, South Carolina 29721

The Honorable Carrie W. Helms
Lancaster County Treasurer
P.O. Box 729
Lancaster, South Carolina 29721

Dear Ms. Morgan and Ms. Helms:

You have requested an opinion of this Office concerning whether the Forfeited Land Commission of Lancaster County ("the Commission") may sell real property in its possession for the amount of the taxes due thereon, without including in the sale price the amounts due for certain assessments and fees. Specifically, you refer to assessments imposed pursuant to the County Public Works Improvement Act, section 4-35-10 *et seq.* of the South Carolina Code, "fire fees," "road improvement fees," and "fee[s] for a bond issued for road improvement within a district."

The Commission likely has the discretion to make a sale of this kind. South Carolina Code section 12-59-40 (2000) requires county forfeited land commissions to "effect the sale of lands forfeited and bid in for" those commissions. The section further provides:

> All lands deeded to the forfeited land commission of any county shall be held by it as assets of the county and State and sold to the best interest of the county and State. [The commission] shall sell and dispose of such lands in such a manner and upon such terms and conditions as to it may appear to be for the best interest of its county . . . .

Id. (emphasis added). This Office has explained the role of a county forfeited land commission as follows:

> One of the main purposes of the commission is to return lands to the tax rolls, rather than have the lands continue as a drain on the tax base. The commission is charged with the duty of selling and disposing [of] lands in a manner and upon such terms and conditions [as] appear to be for the best interests of the county and the State. The

> General Assembly did not rule out that in certain situations, the interests of the county and State would be best served by the commission selling the land for a price lower than the amount of taxes and penalties due on the land. In order to adequately perform [its] duties, the General Assembly seems to have granted the commission broad discretionary authority to structure the sale of lands in such a way as it may deem appropriate, so long as the sale is in the best interest of the county and State.

Letter to the Honorable Linda Sharpe, Aiken County Treasurer, Op. S.C. Att'y Gen. (March 15, 1999) (emphasis added) (attached). Accordingly, it is the opinion of this Office that the Commission likely is authorized to sell property in its possession for the amount of the taxes due, without including in the sale price an amount equal to the outstanding assessments and fees, provided that doing so will serve the best interests of the county and the State.[1] We note, however, that it might be necessary for the county treasurer to apply some *pro rata* portion of the proceeds of such sale to the specific purposes for which the outstanding assessments and fees were imposed. *Cf.* S.C. Code Ann. § 12-59-100 (2000) ("If any tract of land is sold for less than the taxes and penalties due thereon the proceeds of such sale shall be divided between the State and county in the proportion of the amount of taxes and penalties due each of them."); Letter to Mr. Michael L. Horton, Assistant Comptroller General, Op. S.C. Att'y Gen. (July 5, 1994) (see note 1, *supra*); Letter to the Honorable Paul E. Short, Jr., Op. S.C. Att'y Gen. (Apr. 29, 1987)

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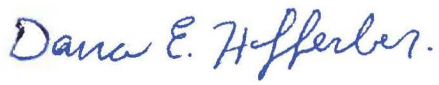
[1] This Office has cautioned that county forfeited land commissions might owe duties to governmental entities other than their county and the State, if such entities have an interest in the property sold. *See* Letter to Mr. Michael L. Horton, Assistant Comptroller General, Op. S.C. Att'y Gen. (July 5, 1994) (opining that "property deeded to [forfeited land commissions] should be held . . . as assets of the counties and districts which have a tax interest in the property" and that "[s]uch property should be sold on terms and conditions which best satisfy [the interests of] both") (attached). However, it is likely that the county is the governmental entity that ultimately would receive the assessments and fees referred to in your opinion request. *See, e.g.*, S.C. Code Ann. § 4-35-40 (Supp. 2010) (authorizing the governing body of a county to finance improvements "in whole or in part, by the imposition of assessments in accordance with this chapter and through the issuance of [various kinds of] bonds . . . or by a combination of the funding sources"); *id.* § 4-35-30(2) (defining the improvements that may be financed under section 4-35-40 to include "the relocation, construction, widening, and paving of roads and streets"); S.C. Code Ann. § 4-19-20 (1986 & Supp. 2010) (authorizing the governing body of a county to "establish [a] fire protection district and, in order to provide for the operation and maintenance of it, authorize the levy of an annual ad valorem tax . . . or the imposition of rates and charges for fire protection services within the fire protection district . . ."); *id.* § 4-19-20(4) (explaining that fire protection districts "may be operated as an administrative division of the county, or the governing body [of the county] may appoint a commission . . . and provide for [the commissioners'] duties and terms of office"); S.C. Code Ann. § 4-9-30(5) (1986 & Supp. 2010) (authorizing counties to create special taxing districts that "may be operated as an administrative division of the county, or county council may appoint a commission . . ." and authorizing counties to impose uniform service charges within such districts). If the county is the ultimate recipient of the assessments and fees about which you have inquired, there does not appear to be a danger that a sale of the kind discussed herein would place the interests of the county at odds with the interests of any other entity to which the Commission might owe a duty.

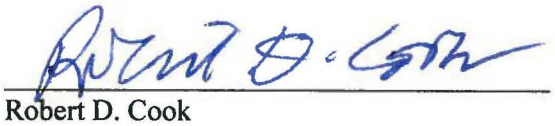
(explaining the constitutional import of distributing the proceeds of a sale for nonpayment of taxes to the various entities that levied the taxes on the property sold) (attached).

Very truly yours,



Dana E. Hofferber
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General